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Tuesday
March 12, 1991

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

MIAMI, FL

WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue
Room 914
Miami, FL
RESERVATIONS: 1–800–347–1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street
Conference Room 1220
Chicago, IL
RESERVATIONS: 1–800–366–2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6258 of March 8, 1991

National School Breakfast Week, 1991

By the President of the United States of America

A Proclamation

For more than two decades, the School Breakfast Program has helped to promote the health and well-being of our Nation's schoolchildren. By helping to ensure that youngsters enter the classroom with the energy and stamina needed to be eager and attentive students, this important child nutrition program has also contributed to the success of America's educational system.

The School Breakfast Program began in 1966 as a pilot project that provided funding for meals for schoolchildren in low-income areas and in areas where children had to travel long distances to school. In 1975, the Program was permanently established, and funding was made available to all schools. Today approximately four million children in more than 38,000 schools receive nutritious morning meals through the School Breakfast Program.

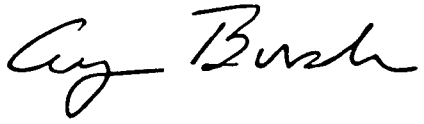
Parents and educators across the country endorse the School Breakfast Program because they believe that it improves youngsters' ability to learn. For the same reason, States have sought to expand the Program in their schools, and some mandate participation.

Federal officials are proud to work with State leaders, educators, food service professionals, parents, and others in making the School Breakfast Program available to our children. Their cooperative efforts are a wonderful example of a successful partnership between Federal and State governments and local communities. They also play an important role in meeting our first National Education Goal: ensuring that, by the year 2000, all children in America start school ready to learn.

In recognition of the School Breakfast Program, the Congress, by House Joint Resolution 98, has designated the week of March 4 through March 10, 1991, as "National School Breakfast Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate the week of March 4 through March 10, 1991, as National School Breakfast Week. I urge all Americans to observe this week in honor of those individuals at the Federal, State, and local levels whose efforts contribute so much to the success of this valuable program.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 91-5971
Filed 3-8-91; 2:23 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 48
Tuesday, March 12, 1991

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916, 917, and 958

[Docket Nos. FV-90-119 and FV-90-165]

Nectarines and Fresh Pears, Plums, and Peaches Grown in California; and Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Corrections

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rules; corrections.

SUMMARY: This document corrects paragraph references in two final rules which appeared in the June 15, 1990 (55 FR 24215), and September 6, 1990 (55 FR 36600) issues of the **Federal Register**. The corrections are needed to facilitate the accurate printing of parts 917 and 958 in the 1991 issue of the Code of Federal Regulations.

EFFECTIVE DATE: September 6, 1990.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 475-3919 or 447-2431.

SUPPLEMENTARY INFORMATION: The first document to be corrected was issued under Marketing Agreement and Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines, pears, peaches, and plums grown in California. The rule was published in the **Federal Register** on June 15, 1990, at page 24215. At page 24223 of that final rule, item number 17, paragraph (a)(1)(v) is incorrectly referenced in the amendatory text and the provisions of § 917.460. That reference should be changed to (a)(3)(v).

The second document to be corrected was issued under Marketing Agreement No. 130 and Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. That final rule was published in the **Federal Register** on September 6, 1990, at page 36600. On page 36601 of that document, all references to paragraph (e)(2) should be changed to (f)(2), and all references to paragraph (g) should be changed to paragraph (h). These paragraphs are in § 958.328.

Thus, the following corrections are hereby made:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. In the June 15, 1990, issue of the **Federal Register**, on page 24233, third column, item number 17, the references to paragraph (a)(1)(v) of § 917.460 should be changed to paragraph (a)(3)(v) of § 917.460. As corrected, item number 17 should read as follows:

17. Paragraph (a)(3)(v) of § 917.460 is amended by adding the words ", or the committee manager's designee," to follow the words "Plum Commodity Committee Manager". As revised, the first four sentences of § 917.460(a)(3)(v) read as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

2. In the September 6, 1990, issue of the **Federal Register**, on page 36601, third column, amendatory statement 2, the reference to paragraphs (e)(2) and (g) should be changed to (f)(2) and (h), respectively, and in § 958.328, the paragraphs designated (e)(2) and (g) should be designated (f)(2) and (h).

Dated: March 6, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-5660 Filed 3-11-91; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AD84

Assistance to Prospective Petitioners

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning its procedures for filing a petition for rulemaking with the NRC. The final rule is necessary to clarify the type of assistance that may be provided to a prospective petitioner.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7211.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (5 U.S.C. 553(e)) requires that each agency give an interested person the right to petition the agency to issue, amend, or repeal a rule. Nuclear Regulatory Commission (NRC) regulations, stated in 10 CFR 2.802, implement this provision.

Paragraph (b) of § 2.802 establishes procedures by which a member of the public may contact the NRC before filing a petition for rulemaking with the agency. The NRC believes that this type of contact may be helpful in describing the procedure and process for filing and responding to a petition for rulemaking, clarifying an existing NRC regulation and the basis for that regulation, and assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner. These amendments to 10 CFR 2.802 are necessary to clarify the type of assistance that may be provided to a prospective petitioner.

Because these amendments deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense

with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with a matter of agency conduct, the type of assistance that may be provided to a prospective petitioner.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

2. In § 2.802, paragraph (b) is revised to read as follows:

§ 2.802 Petition for rulemaking.

* * * * *

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing the Director, Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Regulatory Publications Branch. A prospective petitioner may also telephone the Regulatory Publications Branch on (301) 492–7086 or toll free on (800) 368–5642.

(1) In any consultation prior to the filing of a petition for rulemaking, the assistance that may be provided by the NRC staff is limited to—

(i) Describing the procedure and process for filing and responding to a petition for rulemaking;

(ii) Clarifying an existing NRC regulation and the basis for the regulation; and

(iii) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner.

(2) In any consultation prior to the filing of a petition for rulemaking, in providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the prospective petition for rulemaking.

* * * * *

Dated at Rockville, Maryland, this 26th day of February, 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–5769 Filed 3–11–91; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Waiver of the Nonmanufacturer Rule for Secure Interactive Graphics Systems Computer Workstations at White Sands Missile Range

AGENCY: Small Business Administration.

ACTION: Notice of issue of a waiver of the "Nonmanufacturer Rule".

SUMMARY: This notice advises the public that the Small Business Administration (SBA) has granted a waiver of the Nonmanufacturer Rule for secure interactive graphics systems computer workstations at the White Sands Missile Range for contract DAAD07–90–C–0172. The bais for this wavier is that the Administrator has accepted the contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period of performance) required of an offeror on this procurement. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer or processor on this procurement through the SBA 8(a) program.

EFFECTIVE DATE: The waiver was effective by the Administrator's signature on February 22, 1991.

FOR FURTHER INFORMATION CONTACT: James Fairbairn, Industrial Specialist, phone (202) 653–6588.

SUPPLEMENTARY INFORMATION: On November 15, 1988, Public Law 100–656 incorporated into the Small Business Act the existing policy that recipients of contracts set aside for small business or SBA 8(a) Program shall provide the products of small business manufacturers or processors. The requirement to provide the products of a small business in contracts set aside for small business or for 8(a) contracts is already in SBA regulations. The SBA regulations imposing this requirement are found in 13 CFR 121.906(b) and 121.1106(b). This requirement is commonly referred to as the "Nonmanufacturer Rule".

This waiver was granted pursuant to authority of section 210 of Public Law 101–574, which allows the Administrator of the SBA to issue a waiver for an individual solicitation after reviewing a determination of the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period of performance) required of an offeror by the solicitation. The Administrator accepted the contracting officer's determination that no small business manufacturers or processors could reasonably be expected to satisfy the software and hardware compatibility requirements within the time available at a reasonable price.

This wavier of the Nonmanufacturer Rule establishes for this procurement only that an otherwise qualified small business dealer may supply the product of any domestic manufacturer on this contract awarded through the SBA 8(a) Program.

Dated: February 22, 1991.

Susan Engeleiter,

Administrator.

[FR Doc. 91–5811 Filed 3–11–91; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 122

Business Loans, Export Revolving Line of Credit and International Trade Loans

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The Small Business Administration Reauthorization and Amendments Act of 1990, enacted on November 15, 1990 as Public Law 101-574 (104 Stat. 2814) (1990 legislation), deletes pre-export financing from the export revolding line of credit (ERLC) program, and allows such ERLC loans to extend for three years instead of 18 months. By this deletion, the statute has been broadened to now provide that ERLC loans are available for export purposes generally including, but not limited to, the development of foreign markets. With respect to international trade loans, it removes the requirement that lenders must sell such loans within 180 days. This final rule implement the statutory changes.

EFFECTIVE DATE: March 12, 1991. Comments may be submitted on or before May 13, 1991.

ADDRESSES: Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance. Telephone (202) 205-6490.

SUPPLEMENTARY INFORMATION: Before the 1990 legislation, SBA could guarantee an ERLC loan for pre-export financing and the ERLC loan could be made for no longer than 18 months. The 1990 legislation eliminates the statutory reference to use of proceeds for pre-export activities. By this deletion the statute has been broadened to now provide that ERLC loans are available for export purposes generally including, but not limited to, the development of foreign markets. The 1990 legislation also changes the 18 month maximum maturity for ERLC loans to three years. This final rule reflects these statutory changes.

The SBA is permitted presently to guarantee international trade loans to finance the acquisition, construction, renovation, modernization, improvement or expansion of facilities. Prior to the 1990 legislation, the lender had to sell such loans in the secondary market within 180 days of the date when full disbursement was completed. The 1990 legislation eliminates this requirement to sell within 180 days and this final rule implements the statutory change.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this final rule will not have a significant impact on a substantial number of small entities because ERLC and international trade loans guaranteed by SBA are few in number. For example, in fiscal year 1990, 49 ERLC loans were made with SBA guaranteeing approximately $6,000,000, and 9 international trade loans were made with SBA guarantees of approximately $5,000,000. SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, since the changes are not likely to result in an annual effect on the economy of $100 million or more.

This rule does not impose additional reporting recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chpater 35. This final rule does not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12812.

There is an administrative need to promulgate this rule in final form without public notice and comment because it implements effective provisions of law, but SBA will review and consider comments received.

List of Subjects in 13 CFR Part 122

Exports, Loan programs-business, small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends part 122, chapter I, title 13, Code of Federal Regulations as follows:

PART 122—BUSINESS LOANS

1. The authority citation for part 122 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

2. Section 122.54-1 is revised to read as follows:

§ 122.54-1 Policy.

The Act authorizes a revolving line of credit for export purposes generally including, but not limited to, the development of foreign markets. No such loan shall be made for a period which exceeds three years.

3. Section 122.54-3 is amended by revising the first sentence to read as follows:

§ 122.54-3 Use of proceeds.

Proceeds of an ERLC loan can be used for export purposes in general including, but not limited to, the development of foreign markets.

* * * * *

§ 122.57-5 [Removed]

4. Section 122.57-5 removed.

(Catalog of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

Dated: February 4, 1991.

Susan Engeleiter,

Administrator.

[FR Doc. 91-5551 Filed 3-11-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ASW-45; Amdt. 39-6901]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) Model BK-117 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the removal of fuel return lines, inspection of fuel supply tank vent outlet ports, modification and retrofit of electrical bonding jumpers on the landing gear, and the installation of electrostatic dischargers on MBB Model BK-117 series helicopters. The AD is needed to prevent uncontrolled fuel vapor ignition and fire which could result in the loss of the helicopter.

DATES: Effective Date: April 9, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 9, 1991.

ADDRESSES: The applicable service bulletins may be obtained from MBB, P.O. Box 80 11 40, 8000 Munich 80, West Germany, or may be examined in the Regional Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Swihart, FAA, Rotorcraft Standards Staff, Fort Worth, TX 76193-0110, 817-624-5120.

SUPPLEMENTARY INFORMATION: The FAA recently received a summary of several reports of fuel vapor ignition on certain MBB Model BK-117 series helicopters which could result in an explosion, fire, and subsequent loss of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, and AD is being issued which requires the removal of fuel return lines, inspection of fuel supply tank vent outlet ports, modification and retrofit of electrical bonding jumpers on

the landing gear, and the installation of electrostatic dischargers on MBB Model BK-117 series helcopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39-[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Messerschmitt-Bolkow-Blohm(MBB): Amendment 39-6901. Docket No. 90-ASW-45.

Applicability: All MBB Model BK-117 series helicopters, certificated in any category with the following serial numbers (S/N):

S/N's 7001 up to and including 7261 (Ref. ASB-MBB-BK 117-90-104 dtd. August 11, 1989);

S/N's 7001 up to and including 7241 (Ref. ASB-MBB-BK 117-90-105 dtd. May 23, 1990);

S/N's 7001 up to and including 7215 (Ref. ASB-MBB-BK 117-60-107 dtd. December 12, 1989);

S/N's 7001 up to and including 7215 (Ref. ASB-MBB-BK 117-60-108 dtd. December 22, 1989).

Compliance: Required within the next 50 hours' time in service or within 28 days after the effective date of this AD, whichever comes first.

To prevent uncontrolled fuel vapor ignition which could result in an explosion, fire, and the subsequent loss of the helicopter, accomplish the following:

(a) Modify and retrofit the bonding jumpers on the landing gear in accordance with MBB Alert Service Bulletin, ASB-MBB-BK 117-90-104, dated August 11, 1989.

(b) Install electrostatic dischargers and modify the fuel vent outlet parts in accordance with MBB Alert Service Bulletin, ASB-MBB-BK 117-90-105, dated May 23, 1990, with the following changes to Figure 2, page 10 of 12:

(1) The Note 4 dimension is changed from 145-155 mm to 125 mm.

(2) The P/N 117-181001.03 bracket shown in View A must be rotated 180°.

(3) The added washer, P/N LN 9016-08L (Item 15), must be relocated to the top of the bolt, between the cable terminal and the bolt head, instead of as shown.

(4) In addition, conduct a control freedom check; i.e. collective down, cyclic full forward, aft, left, and right and repeat with collective full-up to assure there is no tension in the cables at any control position.

Note: These four changes are intended to allow enough slack for blade folding and to keep the grip bolt from contacting the sleeve, thus allowing full pitch angle change without straining the jumper.

(c) Remove, without replacing, the fuel return lines in accordance with MBB Alert Service Bulletin, ASB-MBB-BK 117-60-107, dated December 12, 1989.

(d) Inspect fuel supply tank vent outlet ports in accordance with MBB Service Bulletin SB-MBB-BK 117-60-108 dated December 22, 1989, to assure that they are not closed by paint.

(e) An alternate method of compliance with this AD or adjustment of the compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Rotorcraft Standards Staff, ASW-110, Federal Aviation Administration, Fort Worth, Texas 76193-0110, telephone (817) 624-5110.

(f) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where the inspections required by the AD may be accomplished.

The procedures shall be done in accordance with the following service bulletins: ASB-MBB-BK 117-90-104, dated August 11, 1989; ASB-MBB-BK 117-90-105, dated May 23, 1990; ASB-MBB-BK 117-60-107, dated December 12, 1989; and ASB-MBB-BK 117-60-108, dated December 22, 1989, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MBB, P.O. Box 80 11 40, 8000 Munich 80, West Germany. Copies may be inspected at the Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., room 8301, Washington, DC.

Amendment 39-6901 becomes effective April 9, 1991.

Issued in Fort Worth, Texas, on February 5, 1991.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91-5777 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AGL-23]

Alteration to Transition Area; Bellaire, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing Bellaire, MI, transition area by reducing the existing transition are radius. While evaluating the airspace necessary for accommodating a new Microwave Landing System (MLS) Runway 02 instrument approach procedure to Antrim County Airport, Bellaire, MI, the FAA determined that a reduction in the existing transition area radius was in order. The intended effect of this action is to ensure segregation of the aircraft using approach procedures under instrument flight rules from other aircraft operating under visual flight rules in controlled airspace.

EFFECTIVE DATE: 0901 U.T.C. May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION: .

History

On Tuesday, January 8, 1991, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR

part 71) to alter a transition area airspace near Bellaire, MI (56 FR 663). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the designated transition area airspace near Bellaire, MI. While evaluating the airspace necessary to accommodate a new MLS Runway 02 instrument approach procedure transition area radius was in order. The modification to the existing airspace will consist of reducing the existing Bellaire, MI, transition area radius from an 11-mile radius to a 5-mile radius.

The development of the new MLS Runway 02 procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for the procedure may be established below the floor of the 700 foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Bellaire, MI [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Antrim County Airport (lat. 44°59'19"N., long. 85°11'54"W.); and within 3 miles each side of the 198° bearing from the airport extending from the 5-mile radius to 14 miles south of the airport and within 4.75 miles each side of the Traverse City, MI, VORTAC 037 radial, extending from the 5-mile radius to 27 miles southwest of the airport, excluding that portion which overlies the Traverse City, MI, transition area.

Issued in Des Plaines, Illinois, on February 27, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91-5782 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASO-30]

Establishment of Transition Area, Elizabethtown, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes the Elizabethtown, NC Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve the Elizabethtown Airport predicated on the Elizabethtown nondirectional radio beacon (NDB). This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in vicinity of the airport. The additional controlled airspace is required for protection of instrument flight rules (IFR) aeronautical operations. Also, the operating status of the airport will change from visual flight rules (VFR) to IFR concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 u.t.c., August 22, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On January 10, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Elizabethtown, NC Transition Area (56 FR 973). This proposed action would lower the base of controlled airspace from 1200 to 700 feet above the surface in vicinity of the Elizabethtown Airport. An instrument approach procedure has been developed to serve the airport and the additional controlled airspace would be required for protection of IFR aeronautical operations. Also, the operating status of the airport would be changed from VFR to IFR concurrent with publication of the SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes the Elizabethtown, NC Transition Area. This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in vicinity of the Elizabethtown Airport. This action is necessary in order to provide controlled airspace protection for IFR aircraft executing a recently developed instrument approach procedure to the airport. The operating status of the airport will change from VFR to IFR concurrent with publication of the SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition Areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Elizabethtown, NC [New]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Elizabethtown Airport (lat. 34°36'15"N., long. 78°35'15"W.).

Issued in East Point, Georgia, on February 25, 1991.

Don Cass,

Acting Manager, Air Traffic Div., Southern Region.

[FR Doc. 91-5778 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AGL-20]

Alteration to Transition Area; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing Minot, ND, transition area to accommodate a revised VOR Runway 08 Standard Instrument Approach Procedure (SIAP) to Minot International Airport, Minot, ND, and update the latitude/longitude coordinates for the airport. The intended effect of this action is to ensure segregation of the aircraft using approach procedures under instrument flight rules from other aircraft operating under visual flight rules in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, December 26, 1990, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter a transition area airspace near Minot, ND (55 FR 53003). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the designated transition area airspace near Minot, ND. The transition area is being modified to accommodate a revised VOR Runway 08 SIAP to Minot International Airport, Minot, ND, and to update the coordinates for the airport. The modification to the existing airspace will consist of a 7-mile width each side of the Minot VORTAC 258° radial extending from the existing 10-mile radius area to 17.5 miles west of the VORTAC.

The revised instrument approach procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700 foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule when promulgated, will not have a significant economic impact on a substantial number of small entities enter the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Minot, ND [Revised]

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Minot AFB (lat. 48°24'55"N., long. 101°21'25"W.); within a 10-mile radius of Minot International Airport (lat. 48°15'34"N., long. 101°16'51"W.); within 7 miles each side of the Minot VORTAC 258 radial extending from the 10-mile radius area to 17.5 miles west of the VORTAC; and within 4 miles each side of the Minot VORTAC 138 radial extending from the 10-mile radius area to 15.5 miles southeast of the VORTAC; and within 5 miles each side of the Minot VORTAC 097 radial, extending from the 10-mile radius area to 12 miles east of the VORTAC: that airspace extending upward from 1,200 feet above the surface within a 54-mile radius of Minot AFB excluding the area north of lat. 49°00'00"N.

Issued in Des Plaines, Illinois, on February 27, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91-5781 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASO-26]

Revision of Control Zone and Transition Area, Beaufort, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Beaufort, SC Control Zone and

Transition Area. Arrival area extensions are added to the control zone southwest and northwest of the airport. The extensions provide controlled airspace protection for instrument flight rules (IFR) aircraft executing standard instrument approach procedures (SIAPs) to Runways 5 and 14 at Beaufort Marine Corps Air Station (MCAS). The transition area is revised to eliminate the arrival area extension northeast of the airport. Additionally, minor corrections are made in the latitude/longitude coordinate position of Beaufort MCAS and Beaufort County Airports.

EFFECTIVE DATE: 0901 u.t.c., August 22, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On December 18, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Beaufort, SC Control Zone and Transition Area (55 FR 51925). Arrival area extensions would be added to the control zone southwest and northwest of Beaufort MCAS Airport. The transition area would be revised to eliminate the arrival area extension northeast of MCAS Beaufort. Additionally, minor corrections were proposed in the latitude/longitude coordinate positions of Beaufort MCAS and Beaufort County Airports (55 FR 51925). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes this amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Beaufort, SC, Control Zone and Transitional Area. Arrival area extensions are added to the control zone to provide additional controlled airspace protection for IFR aircraft executing standard instrument approaches to runways 5 and 14 at MCAS Beaufort. An arrival area extension is eliminated from the transition area northeast of MCAS Beaufort. Additionally, minor corrections are made in the latitude/longitude coordinate positions of Beaufort MCAS and Beaufort County Airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Beaufort, SC [Revised]

Within a 5-mile radius of Beaufort MCAS (lat. 32°28'38"N., long. 80°43'24"W.); within 2 miles each side of Beaufort TACAN (lat. 32°28'44"N., long. 80°43'03"W.) 036°, 229° and 302° radials extending from the 5-mile radius zone to 7 miles NE, SW, and NW of the TACAN.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Beaufort, SC [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Beaufort MCAS (lat. 32°28'38"N., long. 80°43'24"W.); within a 6-mile radius of Beaufort County Airport (lat. 32°24'43"N., long. 80°38'05"W.); excluding that portion that coincides with the Hilton Head Island, SC Transition Area.

Issued in East Point, Georgia, on February 25, 1991.

Don Cass,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 91-5779 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8337]

RIN 1545-AM08

Allocation and Apportionment of Deduction for State Income Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the allocation and apportionment of deductions for state income taxes in computing taxable income from source inside and outside the United States. These regulations are issued under the authority contained in section 7805 (26 U.S.C. 7805) of the Internal Revenue Code of 1986.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1976, except as follows:

§ 1.861-8(e)(6)(ii) (other than § 1.861-8(e)(6)(ii)(D)).	Taxable years beginning on or after January 1, 1988.
§ 1.861-8(g), the language preceding the examples.	Taxable years beginning on or after January 1, 1988.
§ 1.861-8(g), *Examples 25* through *32.*	Taxable years beginning on or after January 1, 1988.
§ 1.861-8(e)(6)(ii)(D).....	Taxable years ending after March 12, 1991.
§ 1.861-8(g), *Example 33.*	Taxable years ending after March 12, 1991.

FOR FURTHER INFORMATION CONTACT: David F. Chan of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R(INTL-112-88) (202-566-6645, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public comment pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1224.

Comments concerning the collections of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20024.

The collections of information in these regulations are in §§ 1.861-8(e)(6)(ii)(C)(2), and 1.861-8(e)(6)(ii)(D). The information in § 1.861-8(e)(6)(ii)(C)(2) is required by the Service to serve as disclosure of the relevant facts affecting the treatment of the allocation and apportionment of the deduction for state income taxes. This information will be used to monitor compliance with the regulations. The information in § 1.861-8(e)(6)(ii)(D) is required by the Internal Revenue Service to enable taxpayers to make an election to use safe harbor methods of allocating and apportioning the deduction for state income taxes. This information will be used to monitor compliance with the terms of the safe harbor methods. The likely respondents are businesses or other for profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of income. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 1000 hours.

The estimated annual burden per respondent varies from thirty minutes to one hour and thirty minutes, with an estimated average of one hour.

Estimated number of respondents: 1000.

Estimated annual frequency of responses: Annually.

Background

On December 12, 1988, the **Federal Register** published a notice of proposed rulemaking by cross-reference to temporary regulations (53 FR 49893 [INTL-41-88, 1989-1 C.B. 1025]) and temporary regulations (53 FR 49873 [T.D. 8236, 1989-1 C.B. 228]) amending the Income Tax Regulations (26 CFR part 1) under sections 861(b) 862(b), and 863(a) of the Internal Revenue Code of 1986. The notice restated and clarified the general principles applicable to the allocation and apportionment of the deduction for state, local and foreign income, war profits and excess profits taxes (herein "state income taxes"), and provided five specific examples of an appropriate method for the allocation and apportionment of the deduction for state income taxes.

Written comments responding to the notice were received. A public hearing was held on May 19, 1989. After consideration of all comments regarding the notice, that notice is adopted by this Treasury Decision. The significant points raised by the comments and the revisions are discussed below.

Explanation of provisions

Section 1.861-8

Section 1.861-8(e)(6)(i): As adopted by this document, paragraph (e)(6)(i) of § 1.861-8 retains the rule of paragraph (e)(6)(i) of the prior final regulation that the deduction for state income taxes is definitely related, and thus allocable, to the gross income with respect to which those taxes are imposed. This rule is based upon the basic principle, stated in paragraph (a)(2) of § 1.861-8, that a deduction is to be allocated and, if necessary, apportioned based upon the factual relationship of the deduction to gross income.

In response to comments, the regulations have been revised to state more clearly that certain examples in the regulations do not provide exclusive methods of allocating and apportioning the deduction for state income taxes. In addition, the regulations provide two safe harbor methods that taxpayers may elect to use for purposes of allocating and apportioning the deduction for state income taxes.

Several commentators have argued that the deduction for state franchise taxes computed by reference to state taxable income should be allocated to a class of gross income consisting solely of income from sources within the United States. These commentators reason that, because a state franchise tax is technically a tax imposed upon a corporation's activity in that state, the tax is necessarily an expense related to income from sources within the United States.

This argument was rejected for two reasons. First, as discussed below, activities in a state may generate income from sources within or without the United States, or from both sources. Second, state franchise taxes measured by taxable income and state income taxes bear the same factual relationship to income. For example, one state imposes a franchise tax measured by the state's definition of taxable income on corporations doing business in that state, and an income tax imposed at the same rate on the same definition of taxable income on corporations that are not doing business in the state, but that derive income from sources within the state. A state franchise tax should not be allocated and apportioned differently than an income tax computed in an identical manner by the same state. The final regulations continue to reflect the view that a state franchise tax measured by state taxable income, like a state income tax, has a definite factual relationship to the income on which it is imposed, and continue to apply the general rule of paragraph (e)(6)(i) of § 1.861-8 to the deduction for such state franchise taxes.

Other commentators have asserted that the states are not constitutionally permitted to tax income from sources outside the state, and thus have reasoned that the deduction for state income taxes must be allocated solely to income from sources within the United States. The argument of these commentators was rejected because it reflects a misinterpretation of the decisions of the U.S. Supreme Court. The Court has explained that income apportioned by a state to business activities in that state under the unitary business theory of taxation may have more than one geographical source, and is not to be equated with the income sourced in that state in the geographical sense. Moreover, the Court has indicated that states may tax income that is considered to be from foreign sources under the principles of the Internal Revenue Code, provided the income has the appropriate nexus to activities performed in the state. *Mobil Oil Corp.* v. *Commissioner of Taxes,* 445 U.S. 425, 437-440 (1980).

Other commentators assert that a state income tax should be considered an additional cost of doing business, and should be allocated by reference to the income that is considered under federal income tax principles to be derived from that business, without regard to whether the state imposes its income tax on income determined using

federal income tax principles. This argument was rejected because an allocation and apportionment of state income tax on this basis would ignore the direct factual relationship between a state income tax and the income upon which the state actually imposes the tax. The factual relationship of a state income tax to income computed under state law concepts is demonstrated by the fact that the amount of a state income tax increases or decreases in direct relation to the amount of income taxable by the state. A state income tax that is not based upon income determined under federal income tax principles has no such factual relationship to income based upon federal income tax principles.

Other commentators similarly argue that the determination of the income upon which a state income tax is imposed, for purposes of applying paragraph (e)(6)(i) of this section, should be made by reference to federal income tax principles, rather than by reference to state law. These commentators argue that the use of federal income tax principles in determining the income upon which state income taxes are imposed would yield consistency by ignoring differing state definitions of taxable income. These commentators would allocate and apportion state income tax to foreign source income under § 1.861–8 only when the taxpayer's activities in the state are considered to have generated income that is foreign source income under federal income tax principles.

This argument was rejected for several reasons. First, as discussed above, this argument ignores the direct factual relationship between a state income tax and the income upon which the state actually imposes that tax. As discussed above, this factual relationship is demonstrated by the fact that the amount of state income tax changes in direct relation to the amount of income taxable by the state. A state income tax has no such factual relationship to a hypothetical amount of state taxable income calculated on the basis of federal income tax principles which the commentators suggest as the alternative. The U.S. Supreme Court, in *Container Corp.* v. *Franchise Tax Board,* 463 U.S. 159, 184–197 (1983), ruled that a state is not constitutionally required to use federal income tax principles in determining the amount of income attributable to activities in the state.

The methodology suggested by these commentators was also rejected because, contrary to the assertion of those commentators, it would not necessarily be simpler than the approach taken in the proposed regulations. For example, the suggested methodology would require a taxpayer doing business through branches in several states to make a hypothetical determination under federal income tax principles of the amount of income earned from activities in each individual state, without regard to operations in any other state. The proposed regulations, under which each state's determination of taxable income attributable to activities in that state may be presumed valid, would be much simpler to apply in this case.

Numerous comments have been received regarding the application of the proposed regulations to deductions for income taxes imposed by states which have adopted a unitary business theory of income taxation. A state which has adopted a unitary business theory first determines the scope of the unitary business of which a taxpayer corporation's activities in the state form a part. The total income of that unitary business is then apportioned between the taxing state and the rest of the world by means of a formula which takes into account objective measures ("factors") of the taxpayer corporation's activities within and without the taxing state. The most widely used apportionment formula gives equal weight to the proportions of total payroll, property, and sales which are located in the taxing state.

The unitary business theory of state income taxation contrasts with the "arm's length" approach of federal income tax law (and the income tax laws of several states), under which an individual corporation is treated for most purposes as an independent entity dealing at arm's length with affiliated corporations. Under an arm's length approach, a corporation is subject to taxation only with respect to the income reflected on its own books, assuming that such income has been determined on the basis of arm's length principles. (Formulary apportionment may also be used in the context of an arm's length approach by applying an apportionment formula to the total taxable income of a single corporation and considering factors attributable solely to that corporation.)

Commentators have argued that, in the case of a deduction for an income tax imposed by a state which has adopted the unitary business theory, the proposed regulations improperly allocate and apportion the deduction to income other than that of the taxpayer corporation. These commentators appear to reason that the unitary business theory results in the imposition of state tax in part upon the taxable income of corporations other than the corporation paying the tax and, therefore, that the proposed regulations' reliance on a state's definition of taxable income will result in such cases in the allocation of a deduction for state income tax paid by one corporation in part to income attributable to other corporations.

This argument was rejected because it fails to recognize that the unitary business theory takes into account the income, assets, and other factors of a group of affiliated corporations (*i.e.*, those comprising a unitary business) solely for purposes of determining the amount of taxable income that is properly attributable to the corporation or corporations over which a state has taxing jurisdiction. The application of formulary apportionment under a unitary business theory is simply one method of allocating the income of a multinational enterprise among its component parts (the "arm's length" approach being another such method). *Container Corp.* v. *Franchise Tax Board, supra,* at 188. A state which employs a unitary business theory imposes tax only upon taxable income which is attributed to a corporation over which it has taxing jurisdiction. It is, therefore, appropriate to allocate and apportion a deduction for state income taxes paid by such corporations on the basis of their state taxable income.

Finally, two commentators have argued that the proposed regulations are inconsistent with the pre-existing regulations under section 1502 of the Code relating to the computation of the consolidated foreign tax credit. These commentators assert that §§ 1.1502–4 and 1.1502–12 of the regulations require a corporation to allocate and apportion its deductions based upon income as determined under federal income tax principles. They argue that the proposed regulations are inconsistent because the proposed regulations can require the deduction for a state income tax to be allocated and apportioned based upon an amount of state taxable income determined under the unitary business theory of taxation. Implicit in this argument is the notion that the unitary business theory may result in the taxation of the income of corporations other than the taxpayer.

This argument was rejected because § 1.1502–12 of the regulations, which defines separate taxable income for purposes of determining the limitation on the consolidated foreign tax credit under § 1.1502–4, merely states that, subject to enumerated modifications not relevant here, the taxable income of a

corporation filing a consolidated income tax return as part of an affiliated group of corporations is to be computed using the same Code rules that would apply to a corporation filing a separate income tax return. Section 1.1502–12 does not alter the principle of § 1.861–8 that deductions are to be allocated and apportioned based on the factual relationship between the deduction and a class of gross income. Moreover, as noted above, the unitary business theory of taxation is merely a method of determining the amount of taxable income that can be properly attributed to the taxpayer corporation.

One commentator further argues that the proposed regulations are inconsistent with §§ 1.1502–4 and 1.1502–12 because they could require state income tax imposed under the unitary business theory of taxation to be apportioned to foreign source income, thereby creating a negative amount of foreign source taxable income when a corporation has no foreign source gross income for federal tax purposes. This commentator asserts that §§ 1.1502–4 and 1.1502–12 of the regulations, which refer to a company's "separate taxable income," do not permit an allocation and apportionment of a deduction to nonexistent foreign source gross income. This argument was rejected because it is contrary to the language of § 1.1502–12, which states that the term "separate taxable income" shall include an excess of deductions over gross income. It is also contrary to Example 17 of paragraph (g) of § 1.861–8, which illustrates that a deduction can be allocated and apportioned in part to foreign source income when computing the consolidated foreign tax credit in a year in which the taxpayer has no foreign source gross income. Example 17, which was promulgated in 1977, indicates that a deduction can be factually related and thus allocable to a class of gross income which includes foreign source income in a year in which the taxpayer actually derives no foreign source income. Thus, the allocation and apportionment of a deduction can create a foreign source loss for purposes of computing the consolidated foreign tax credit. This rule is restated in the final regulation and illustrated in new Example 30 of paragraph (g) of this section.

Section 1.861–8(e)(6)(ii): One commentator asked that an allocation of state income tax based upon a methodology illustrated in the examples be presumed reasonable, and thus binding upon the Service, except at the election of the taxpayer. This proposal is adopted with respect to Example 33. However, this proposal was rejected with respect to the remaining examples because it could bind the Service to an allocation based upon an example, even if the taxpayer's facts bore no resemblance to the facts upon which those examples were based. Such a result would violate the fundamental principle of these regulations—that deductions be allocated based upon the factual relationship of the deduction to a class of gross income.

The final regulations revise the proposed regulations to indicate that a taxpayer that chooses to apply the methodology of Example 25 of paragraph (g) of this section must also apply the modifications of Example 25 illustrated in Examples 26 and 27 of paragraph (g), and that a taxpayer must always apply the rule illustrated in Example 28, with respect to foreign source dividends taxed by a state without regard to factors of the corporations paying those dividends, without regard to whether the particular methodology of Example 25 is applied with respect to the remaining deduction. The modification illustrated in Example 26 must be applied if the taxpayer's deduction for state income taxes is attributable in part to taxes paid to a state which exempts foreign source income from taxation. The modification illustrated in Example 27 must be applied if the taxpayer has income-producing activities in a state which does not impose a corporate income tax or other tax computed by reference to income. The final regulations also revise the proposed regulations to clarify that a methodology illustrated in Example 25 (as modified by Examples 26 and 27), 29, or 31 will not be appropriate with respect to an actual taxpayer if the facts of the example are so dissimilar from the taxpayer's factual situation that the application of the example to the actual facts does not result in a reasonable allocation, under all of the facts and circumstances, of a deduction to the gross income to which it relates.

A deduction may be allocated and apportioned under a method other than those illustrated in Example 25 (as modified by Examples 26 and 27) or 29 if it is established to the satisfaction of the District Director upon examination that a different method yields a more accurate allocation and apportionment of state income taxes based on the factual relationship of the state income tax to the income on which the tax is imposed.

The final regulation reserves on simplified methods for dealing with the effect of redeterminations of state income tax liability, subsequent to an allocation and apportionment of the deduction for state income tax. A taxpayer is generally required to recompute its allocation and apportionment of the deduction for state income taxes in the event of a redetermination of any state income tax liability. The Service is considering adoption of an approach in which the taxpayer would be permitted to perform this recomputation on the basis of a methodology other than that used for the initial allocation and apportionment, provided that the new methodology was consistent with these final regulations. If a taxpayer had performed an initial allocation and apportionment of the deduction on the basis of a methodology which utilized ratios of foreign source federal taxable income and U.S. source federal taxable income to total federal taxable income, the taxpayer generally would not be required to recompute these ratios for purposes of reapplying the same methodology to the redetermined deduction. In view of the fact that some taxpayers may not have retained all of the records that might be required to recompute an allocation and apportionment for an early taxable year, the Service is also considering adoption of a rule analogous to that of the regulations under section 905(c) with respect to redeterminations relating to taxable years beginning before January 1, 1988. Under such a rule, the deduction for state income tax in the taxable year of redetermination (whether a pre-1988 or post-1987 taxable year) would then be allocated and apportioned under this final regulation using the information for the year of the redetermination. The Service hereby requests taxpayer comments with respect to the approaches described above and alternative approaches. Comments should be directed to Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL–0009–91), Washington, DC 20224.

Section 1.861–8(e)(6)(iii): Paragraph (e)(6)(iii) of § 1.861–8 provides that the regulations in paragraph (e)(6)(i) are effective for taxable years beginning after December 31, 1976, and that the regulations in paragraph (e)(6)(ii) (other than paragraph (e)(6)(ii)(D)) and Examples 25 through 32 of § 1.861–8(g) are effective for taxable years beginning on or after January 1, 1988. Paragraph (e)(6)(ii)(D) and Example 33 of paragraph (g) of § 1.861–8 are effective for taxable years ending after March 12, 1991. This paragraph also provides taxpayers with the option to apply the regulations in (e)(6)(ii) (other than paragraph (e)(6)(ii)(D)) and Examples 25 through 32 of paragraph (g) to

deductions for state income tax incurred in taxable years beginning before January 1, 1988.

Section 1.861–8(g)

Paragraph (g) of § 1.861–8 as promulgated herein restates the previously promulgated language that precedes the examples in § 1.861–8(g). Language on the effect of examples contained in this paragraph of the proposed regulations was moved to paragraph (e)(6)(ii) to clarify the effect of Examples 25 through 33. Several linguistic and clarifying changes also have been made to the language of Examples 25 through 29.

Example 27

The final regulations revise Example 27 to state more clearly that any reasonable method may be used to determine the amount of taxable income attributable to a corporate taxpayer's activities in a state that does not impose a corporate income tax.

Example 29

The language of Example 29 has been revised to indicate more clearly that a deduction for income tax imposed by a state that applies a unitary business theory to determine state taxable income is allocated and apportioned under § 1.861–8 based solely upon the taxable income which the state considers to be attributable to the taxpayer's activities in that state.

Examples 30 through 33

In response to comments concerning the allocation and apportionment of the deduction for state income taxes in computing the consolidated foreign tax credit limitation under § 1.1502–4, the final regulations add new Example 30. Example 30 illustrates the general rule (stated in paragraph (e)(6)(i) of this section) that the principles of Example 17 of paragraph (g) of this section apply in the case of a deduction for state income tax, and that a deduction for state income tax may be apportionable to foreign source income even if the taxpayer has a foreign source loss in the taxable year as a result of the allocation and apportionment of deductions. Example 30 also demonstrates that a deduction for income tax imposed by a state which applies a unitary business theory of taxation may be apportionable to foreign source income, even if the taxpayer corporation has no foreign activities of its own, if the taxpayer's unitary business group includes one or more corporations whose activities produce foreign source income that is attributed to the taxpayer corporation.

In response to comments requesting clarification of acceptable alternatives to, and modifications of, the examples contained in the proposed regulations, the final regulations add new Examples 31 and 32 to paragraph (g) of § 1.861–8. Example 31 illustrates a situation in which an alternative method of allocating and apportioning a deduction does reasonably reflect the factual relationship of the deduction to gross income. Example 32 illustrates a situation in which an alternative method of allocating and apportioning a deduction does not reasonably reflect the factual relationship of the deduction to gross income.

Example 33 illustrates the operation of the elective safe harbor methods.

Special Analyses

It has been determined that this final rule is not a major legislative regulation subject to Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is David F. Chan of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.861–1 through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in United States, Foreign tax credit, FSC, Source of income, United States investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 1.861-8T [Amended]

Par. 2. Section 1.861–8T is amended as follows:

1. Section 1.861–8T(e)(6) is removed and reserved.

2. Section 1.861–8T(g) introductory text and *Examples (25)* through *(29)* are removed.

Par. 3. Section 1.861–8 is amended as follows:

1. Section 1.861–8(e)(6) is revised to read as set forth below.

2. In § 1.861–8(g), "[Reserved]" is removed, the introductory text and *Examples 25* and *26* are revised, and *Examples 27* through *33* are added to read as set forth below. The amendments to § 1.861–8 read as follows:

§ 1.861-8. Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) *Allocation and apportionment of certain deductions* * * *

(6) *Income taxes*—(i) *In general.* The deduction for state, local, and foreign income, war profits and excess profits taxes ("state income taxes") allowed by section 164 shall be considered definitely related and allocable to the gross income with respect to which such state income taxes are imposed. For example, if a domestic corporation is subject to state income taxation and the state income tax is imposed in part on an amount of foreign source income, then that part of the taxpayer's deduction for state income tax that is attributable to foreign source income is definitely related and allocable to foreign source income. In allocating and apportioning the deduction for state income tax for purposes including (but not limited to) the computation of the foreign tax credit limitation under section 904 of the Code and the consolidated foreign tax credit under § 1.1502–4 of the regulations, the income upon which the state income tax is imposed is determined by reference to the law of the jurisdiction imposing the tax. Thus, if a state attributes taxable income to a corporate taxpayer by applying an apportionment formula that takes into consideration the income and factors of one or more corporations related by ownership to the corporate taxpayer and engaging in activities

related to the business of the corporate taxpayer, then the income so attributed is the income upon which the state income tax is imposed. If the income so attributed to the corporate taxpayer includes foreign source income, then, in computing the taxpayer's foreign tax credit limitation under section 904, for example, the taxpayer's deduction for state income tax will be considered definitely related and allocable to a class of gross income that includes the statutory grouping of foreign source income. When the law of the state includes dividends that are treated under section 862(a)(2) as income from sources without the United States in taxable income apportionable to the state, but does not include factors of the corporation paying such dividends in the apportionment formula used to determine state taxable income, an appropriate portion of the deduction for state income tax will be considered definitely related and allocable to a class of gross income consisting solely of foreign source dividend income. A deduction for state income tax will not be considered definitely related to a hypothetical amount of income calculated under federal tax principles when the jurisdiction imposing the tax computes taxable income under different principles. A corporate taxpayer's deduction for a state franchise tax that is computed on the basis of income attributable to business activities conducted within the state must be allocated and apportioned in the same manner as the deduction for state income taxes. In determining, for example, both the foreign tax credit under section 904 of the Code and the consolidated foreign tax credit limitation under § 1.1502-4 of the regulations, the deduction for state income tax may be allocable and apportionable to foreign source income in a statutory grouping described in section 904(d) in a taxable year in which the taxpayer has no foreign source income in such statutory grouping. Alternatively, such an allocation or apportionment may be appropriate if a taxpayer corporation has no foreign source income in a statutory grouping, but its deduction is attributable to foreign source income in such grouping that is attributed to the taxpayer corporation under the law of a state which attributes taxable income to a corporation by applying an apportionment formula that takes into consideration the income and factors of one or more corporations related by ownership to the taxpayer corporation and engaging in activities related to the business of the taxpayer corporation. Example 30 of paragraph (g) of this section illustrates the application of this last rule.

(ii) *Methods of allocation and apportionment*—(A) *In general.* A taxpayer's deduction for a state income tax is to be allocated (and then apportioned, if necessary, subject to the rules of § 1.861-8(d)) by reference to the taxable income that the law of the taxing jurisdiction attributes to the taxpayer ("state taxable income").

(B) *Effect of subsequent recomputations of state income tax.* [Reserved]

(C) *Illustrations*—(*1*) *In general.* Examples 25 through 32 of paragraph (g) of § 1.861-8 illustrate, in the given factual situations, the application of this paragraph (e)(6) and the general rule of paragraph (b)(1) of this section that a deduction must be allocated to the class of gross income to which the deduction is factually related. In general, these examples employ a presumption that state income taxes are allocable to a class of gross income that includes the statutory grouping of income from sources without the United States when the total amount of taxable income determined under state law exceeds the amount of taxable income determined under the Code (without taking into account the deduction for state income taxes) in the residual grouping of income from sources within the United States. A taxpayer that allocates and apportions the deduction for state income tax in accordance with the methodology of Example 25 of paragraph (g) of this section must also apply the modifications illustrated in Examples 26 and 27 of paragraph (g) of this section, when applicable. The modification illustrated in *Example 26* is applicable when the deduction for state income tax is attributable in part to taxes imposed by a state which factually excludes foreign source income (as determined for federal income tax purposes) from state taxable income. The modification illustrated in *Example 27* is applicable when the taxpayer has income-producing activities in a state which does not impose a corporate income tax. The specific allocation of state income tax illustrated in Example 28 follows the rule in paragraph (e)(6)(i) of this section, and must be applied whenever a taxpayer's state taxable income includes dividends apportioned to the state under a formula that does not take into account the factors of the corporations paying those dividends, regardless of whether the taxpayer uses the methodology of Example 25 with respect to the remainder of the deduction for state income taxes.

(*2*) *Modifications.* Before applying a method of allocation and apportionment illustrated in the examples, the computation of state taxable income under state law may be modified, subject to the approval of the District Director, to reflect more accurately the income with respect to which the state income tax is imposed. Any modification to the state law computation of state taxable income must yield an allocation and apportionment of the deduction for state income taxes that is consistent with the rules contained in this paragraph (e)(6), and that accurately reflects the factual relationship between the state income tax and the income on which that tax is imposed. For example, a modification to the computation of taxable income under state law might be appropriate to compensate for differences between the state law definition of taxable income and the federal definition of taxable income, due to a difference in the rate of allowable depreciation or the amount of another deduction that is allowable under both systems. This rule is illustrated in Example 31 of paragraph (g) of this section. However, a modification to the computation of taxable income under state law will not be appropriate, and will not more accurately reflect the factual relationship between the state tax and the income on which the tax is imposed, to the extent such modification reflects the fact that the state does not follow federal tax principles in attributing income to the taxpayer's activities in the state. This rule is illustrated in Example 32 of paragraph (g) of this section. A taxpayer may not modify the methods illustrated in the examples, or use an alternative method of allocation and apportionment of the deduction for state income taxes, if the modification or alternative method would be inconsistent with the rules of paragraph (e)(6)(i) of this section. A taxpayer that uses a method of allocation and apportionment other than one illustrated in Example 25 (as modified by Examples 26 and 27), or 29 with respect to a factual situation similar to those of the examples, must describe the alternative method on an attachment to its federal income tax return and establish to the satisfaction of the District Director, upon examination, that the result of the alternative method more accurately reflects the factual relationship between the state income tax and the income on which the tax is imposed.

(D) *Elective safe harbor methods.* (*1*) *In general.* In lieu of applying the rules set forth in paragraphs (e)(6)(ii) (A) through (C) of this section, a taxpayer

may elect to allocate and apportion the deduction for state income tax in accordance with one of the two safe harbor methods described in paragraph (e)(6)(ii)(D) (*2*) and (*3*) of this section. A taxpayer shall make this election for a taxable year by filing a timely tax return for that year that reflects an allocation and apportionment of the deduction for state income tax under one of the safe harbor methods and attaching to such return a statement that the taxpayer has elected to use the safe harbor method provided in either paragraph (e)(6)(ii)(D) (*2*) or (*3*) of this section, as appropriate. Once made, this election is effective for the taxable year for which made and all subsequent taxable years, and may be revoked only with the consent of the Commissioner. Example 33 of paragraph (g) of this section illustrates the application of these safe harbor methods.

(*2*) *Method One.* (*i*) *Step One—Specific allocation to foreign source portfolio dividends.* If any portion of the deduction for state income tax is attributable to tax imposed by a state which includes in a corporate taxpayer's taxable income apportionable to the state, portfolio dividends (as defined in paragraph (i) of Example 28 of paragraph (g) of this section) that are treated under section 862(a)(2) as income from sources without the United States, but does not include factors of the corporations paying the portfolio dividends in the apportionment formula used to determine state taxable income, the taxpayer shall allocate an appropriate portion of the deduction to a class of gross income consisting solely of foreign source portfolio dividends. The portion of the deduction so allocated, and the amount of foreign source portfolio dividends included in such class, shall be determined in accordance with the methodology illustrated in paragraph (ii) of Example 28 of paragraph (g). The taxpayer shall reduce its aggregate state taxable income by the amount of foreign source portfolio dividends to which a specific allocation is made (the reduced amount being referred to hereinafter as "adjusted state taxable income").

(*ii*) *Step Two—Adjustment of U.S. source federal taxable income.* If the taxpayer has significant income-producing activities in a state which does not impose a corporate income tax or other state tax measured by income derived from business activities in the state, the taxpayer shall reduce its U.S. source federal taxable income (solely for purposes of this safe harbor method) by the amount of federal taxable income attributable to its activities in such state. This amount shall be determined in accordance with the methodology illustrated in paragraph (ii) of Example 27 of paragraph (g) of this section, provided that the taxpayer shall be required to use the rules of the Uniform Division of Income for Tax Purposes Act to attribute income to the relevant state. The taxpayer's U.S. source federal taxable income, as so reduced, is referred to hereinafter as "adjusted U.S. source federal taxable income."

(*iii*) *Step Three—Allocation.* The taxpayer shall allocate the remainder of the deduction for state income tax (after reduction by the portion allocated to foreign source portfolio dividends under Step One) in accordance with the methodology illustrated in paragraph (ii) of Example 25 of paragraph (g) of this section. However, the taxpayer shall substitute for the comparison of aggregate state taxable income to U.S. source federal taxable income, illustrated in paragraph (ii) of Example 25 of paragraph (g) of this section, a comparison of its adjusted state taxable income to an amount equal to 110% of its adjusted U.S. source federal taxable income.

(*iv*) *Step Four—Apportionment.* In the event that apportionment of the remainder of the deduction for state income tax is required, the taxpayer shall apportion that remaining deduction to U.S. source income in accordance with the methodology illustrated in paragraph (iii) of Example 25 of paragraph (g) of this section, substituting for domestic source income in that paragraph an amount equal to 110% of the taxpayer's adjusted U.S. source federal taxable income. The remaining portion of the deduction shall be apportioned to the statutory groupings of foreign source income described in section 904(d) of the Code in accordance with the proportion of the income in each statutory grouping of foreign source income described in section 904(d) to the taxpayer's total foreign source federal taxable income (after reduction by the amount of foreign source portfolio dividends to which tax has been specifically allocated under Step One, above).

(*3*) *Method Two.* (*i*) *Step One—Specific allocation to foreign source portfolio dividends.* Step One of this method is the same as Step One of Method One (as described in paragraph (e)(6)(ii)(D)(*2*)(*i*) of this section).

(*ii*) *Step Two—Adjustment of U.S. source federal taxable income.* Step Two of this method is the same as Step Two of Method One (as described in paragraph (e)(6)(ii)(D)(*2*)(*ii*) of this section).

(*iii*) *Step Three—Allocation.* The taxpayer shall allocate the remainder of the deduction for state income tax (after reduction by the portion allocated to foreign source portfolio dividends under Step One) in accordance with the methodology illustrated in paragraph (ii) of Example 25 of paragraph (g) of this section. However, the taxpayer shall substitute for the comparison of aggregate state taxable income to U.S. source federal taxable income, illustrated in paragraph (ii) of Example 25 of paragraph (g) of this section, a comparison of its adjusted state taxable income to its adjusted U.S. source federal taxable income.

(*iv*) *Step Four—Apportionment.* In the event that apportionment of the deduction is required, the taxpayer shall apportion to U.S. source income that portion of the deduction that is attributable to state income taxes imposed upon an amount of state taxable income equal to adjusted U.S. source federal taxable income. The taxpayer shall apportion the remaining amount of the deduction to U.S. and foreign source income in the same proportions that the taxpayer's adjusted U.S. source federal taxable income and foreign source federal taxable income (after reduction by the amount of foreign source portfolio dividends to which tax has been specifically allocated under Step One, above) bear to its total federal taxable income (taking into account the adjustment of U.S. source federal taxable income under Step Two and after reduction by the amount of foreign source portfolio dividends to which tax has been specifically allocated under Step One). The portion of the deduction apportioned to foreign source income shall be apportioned among the statutory groupings described in section 904(d) of the Code in accordance with the proportions of the taxpayer's total foreign source federal taxable income (after reduction by the amount of foreign source portfolio dividends to which tax has been specifically allocated under Step One, above) in each grouping.

(iii) *Effective dates.* The rules of § 1.861–8(e)(6)(i) and the language preceding the examples in § 1.861–8(g) are effective for taxable years beginning after December 31, 1976. The rules of § 1.861–8(e)(6)(ii) (other than § 1.861–8(e)(6)(ii)(D)) and Examples 25 through 32 of § 1.861–8(g) are effective for taxable years beginning on or after January 1, 1988. The rules of § 1.861–8(e)(6)(ii)(D) and Example 33 of § 1.861–8(g) are effective for taxable years ending after March 12, 1991. At the option of the taxpayer, however, the rules of § 1.861–8(e)(6)(ii) (other than

§ 1.861–8(e)(6)(ii)(D)] and Examples 25 through 32 of § 1.861–8(g) may be applied with respect to deductions for state taxes incurred in taxable years beginning before January 1, 1988.

* * * * *

(g) *General examples.* The following examples illustrate the principles of this section. In each example, unless otherwise specified, the operative section which is applied and gives rise to the statutory grouping of gross income is the overall limitation to the foreign tax credit under section 904(a). In addition, in each example, where a method of allocation or apportionment is illustrated as an acceptable method, it is assumed that such method is used by the taxpayer on a consistent basis from year to year (except in the case of the optional method for apportioning research and development expense under paragraph (e)(3)(iii) of § 1.861–8). Further, it is assumed that each party named in each example operates on a calendar year accounting basis and, where the party is a U.S. taxpayer, files returns on a calendar year basis.

* * * * *

Example 25—Income Taxes—(i) *Facts.* X, a domestic corporation, is a manufacturer and distributor of electronic equipment with operations in states A, B, and C. X also has a branch in country Y which manufactures and distributes the same type of electronic equipment. In 1988, X has taxable income from these activities, as described under the Code (without taking into account the deduction for state income taxes), of $1,000,000, of which $200,000 is foreign source general limitation income subject to a separate limitation under section 904(d)(1)(I) ("general limitation income") and $800,000 is domestic source income. States A, B, and C each determine X's income subject to tax within their state by making adjustments to X's taxable income as determined under the Code, and then apportioning the adjusted taxable income on the basis of the relative amounts of X's payroll, property, and sales within each state as compared to X's worldwide payroll, property, and sales. The adjustments made by states A, B, and C all involve adding and subtracting enumerated items from taxable income as determined under the Code. However, in making these adjustments to taxable income, none of the states specifically exempts foreign source income as determined under the Code. On this basis, it is determined that X has taxable income of $550,000, $200,000, and $200,00 in states A, B, and C, respectively. The corporate tax rates in states A, B, and C are 10 percent, 5 percent, and 2 percent, respectively, and X has total state income tax liabilities of $69,000 ($55,000 + $10,000 + $4,000), which it deducts as an expense for federal income tax purposes.

(ii) *Allocation.* X's deduction of $69,000 for state income taxes is definitely related and thus allocable to the gross income with respect to which the taxes are imposed. Since the statutes of states A, B, and C do not specifically exempt foreign source income (as determined under the Code) from taxation and since, in the aggregate, states A, B, and C tax $950,000 of X's income while only $800,000 is domestic source income under the Code, it is presumed that state income taxes are imposed on $150,000 of foreign source income. The deduction for state income taxes is therefore related and allocable to both X's foreign source and domestic source income.

(iii) *Apportionment.* For purposes of computing the foreign tax credit limitation, X's income is comprised of one statutory grouping, foreign source general limitation gross income, and one residual grouping, gross income from sources within the United States. The state income tax deduction of $69,000 must be apportioned between these two groupings. Corporation X calculates the apportionment on the basis of the relative amounts of foreign source general limitation taxable income and U.S. source taxable income subject to state taxation. In this case, state income taxes are presumed to be imposed on $800,000 of domestic source income and $150,000 of foreign source general limitation income.

State income tax deduction apportioned to foreign source general limitation income (statutory grouping): $69,000 × ($150,000/$950,000)	$10,895
State income tax deduction apportioned to income from sources within the United States (residual grouping): $69,000 × ($800,000/$950,000)	58,105
Total apportioned state income tax deduction	$69,000

Example 26—Income Taxes—(i) *Facts.* Assume the same facts as in Example 25 except that the language of state A's statute and the statute's operation exempt from taxation all foreign source income, as determined under the Code, so that foreign source income is not included in adjusted taxable income subject to apportionment in state A (and factors relating to X's country Y branch are not taken into account in computing the state A apportionment fraction).

(ii) *Allocation.* X's deduction of $69,000 for state income taxes is definitely related and thus allocable to the gross income with respect to which the taxes are imposed. Since state A exempts all foreign source income by statute, state A is presumed to impose tax on $550,000 of X's $800,000 of domestic source income. X's state A tax of $55,000 is allocable, therefore, solely to domestic source income. Since the statutes of states B and C do not specifically exclude all foreign source income as determined under the Code, and since states B and C impose tax on $400,000 ($200,000 + $200,000) of X's income of which only $250,000 ($800,000 − $550,000) is presumed to be domestic source, the deduction for the $14,000 of income taxes imposed by states B and C is related and allocable to both foreign source and domestic source income.

(iii) *Apportionment.* (A) For purposes of computing the foreign tax credit limitation, X's income is comprised of one statutory grouping, foreign source general limitation gross income, and one residual grouping, gross income from sources within the United States. The deduction of $14,000 for income taxes of states B and C must be apportioned between these two groupings.

(B) Corporation X calculates the apportionment on the basis of the relative amounts of foreign source general limitation income and U.S. source income subject to state taxation.

States B and C income tax deduction apportioned to foreign source general limitation income (statutory grouping): $14,000 × ($150,000/$400,000)	$5,250
States B and C income tax deduction apportioned to income from sources within the United States (residual grouping): $14,000 × ($250,000/$400,000)	8,750
Total apportioned state income tax deduction	$14,000

(C) Of X's total income taxes of $69,000, the amount allocated and apportioned to foreign source general limitation income equals $5,250. The total amount of state income taxes allocated and apportioned to U.S. source income equals $63,750 ($55,000 + $8,750).

Example 27—Income Tax—(i) *Facts.* Assume the same facts as in Example 25 except that state A, in which X has significant income-producing activities, does not impose a corporate income tax or other state tax computed on the basis of income derived from business activities conducted in state A. X therefore has a total state income tax liability in 1988 of $14,000 ($10,000 paid to state B plus $4,000 paid to state C), all of which is subject to allocation and apportionment under paragraph (b) of this section.

(ii) *Allocation.* (A) X's deduction of $14,000 for state income taxes is definitely related and allocable to the gross income with respect to which the taxes are imposed. However, in these facts, an adjustment is necessary before the aggregate state taxable incomes can be compared with U.S. source income on the federal income tax return in the manner described in Examples 25 and 26. Unlike the facts in Examples 25 and 26, state A imposes no income tax and does not define taxable income attributable to activities in state A. The total amount of X's income subject to state taxation is, therefore, $400,000 ($200,000 in state B and $200,000 in state C). This total presumptively does not include any income attributable to activities performed in state A and therefore can not properly be compared to total U.S. source taxable income reported by X for federal income tax purposes, which does include income attributable to state A activities.

(B)(1) Accordingly, before applying the method used in Examples 25 and 26 to the facts of this example, it is necessary first to estimate the amount of taxable income that state A could reasonably attribute to X's

activities in state A, and then to reduce federal taxable income by that amount.

(2) Any reasonable method may be used to attribute taxable income to X's activities in state A. For example, the rules of the Uniform Division of Income for Tax Purposes Act ("UDITPA") attribute income to a state on the basis of the average of three ratios that are based upon the taxpayer's facts—property within the state over total property, payroll within the state over total payroll, and sales within the state over total sales—and, with adjustments, provide a reasonable method for this purpose. When applying the rules of UDITPA to estimate U.S. source income derived from state A activities, the taxpayer's UDITPA factors must be adjusted to eliminate both taxable income and factors attributable to a foreign branch. Therefore, in this example all taxable income as well as UDITPA apportionment factors (property, payroll, and sales) attributable to X's country Y branch must be eliminated.

(C)(1) Since it is presumed that, if state A had had an income tax, state A would not attempt to tax the income derived by X's country Y branch, any reasonable estimate of the income that would be taxed by state A must exclude any foreign source income.

(2) When using the rules of UDITPA to estiamte the income that would have been taxable by state A in these facts, foreign source income is excluded by starting with federally defined taxable income (before deduction for state income taxes) and subtracting any income derived by X's country Y branch. The hypothetical state A taxable income is then determined by multiplying the resulting difference by the average of X's state A property, payroll, and sales ratios, determined using the principles of UDITPA (after adjustment by eliminating the country Y branch factors). The resulting product is presumed to be exclusively U.S. source income, and the allocation and apportionment method described in Example 26 must then be applied.

(3) If, for example, state A taxable income were determined to equal $550,000, then $550,000 of U.S. source income for federal income tax purposes would be presumed to constitute state A taxable income. Under Example 26, the remaining $250,000 ($800,000 − $550,000) of U.S. source income for federal income tax purposes would be presumed to be subject to tax in states B and C. Since states B and C impose tax on $400,000, the application of Example 25 would result in a presumption that $150,000 is foreign source income and $250,000 is domestic source income. The deduction for the $14,000 of income taxes of states B and C would therefore be related and allocable to both foreign source and domestic source income and would be subject to apportionment.

(iii) *Apportionment.* The deduction of $14,000 for income taxes of states B and C is apportioned in the same manner as in Example 26. As a result, $5,250 of the $14,000 of state B and state C income taxes is apportioned to foreign source general limitation income ($14,000 × $150,000/$400,000), and $8,750 ($14,000 × $250,000/$400,000) of the $14,000 of state B and state C income taxes is apportioned to U.S. source income

Example 28—Income Tax—(i) *Facts.* (A) Assume the same facts as in Example 25 (X has $1,000,000 of taxable income for federal income tax purposes, $800,000 of which is U.S. source income and $200,000 of which is foreign source general limitation income), except that $100,000 of X's $200,000 of foreign source general limitation income consists of dividends from first-tier controlled foreign corporations ("CFCs") (as defined in section 957(a) of the Code) which derive exclusively foreign source general limitation income. X owns stock representing 10 to 50 percent of the vote and value in such CFCs.

(B) State A taxable income is computed by first making adjustments to X's federal taxable income. These adjustments result in X having a total of $1,100,000 of apportionable taxable income for state A tax purposes. None of the $100,000 of adjustments made by state A relate to the dividends paid by the CFCs. As in Example 25, the amount of apportionable taxable income attributable to business activities conducted in state A is determined by multiplying apportionable taxable income by a fraction (the "state apportionment fraction") that compares the relative amounts of X's payroll, property, and sales within state A with X's worldwide payroll, property and sales. An analysis of state A law indicates that state A law includes in its definition of the taxable business income of X which is apportionable to X's state A activities, dividends paid to X by its subsidiaries that are in the same business as X, but are less than 50 percent owned by X ("portfolio dividends"). The dividends received by X from the 10 to 50 percent owned first-tier CFCs, therefore, are considered to be portfolio dividends includable in apportionable business income for state A tax purposes. However, the factors of these CFCs are not included in the state A apportionment fraction for purposes of apportioning income to X's activities in the state. The comparison of X's state A factors with X's worldwide factors results in a state apportionment fraction of 50 percent. Applying this fraction to apportionable taxable income of $1,100,000, as determined under state law, results in attributing 50 percent of apportionable taxable income to state A, and produces total state A taxable income of $550,000. State A imposes an income tax at a rate of 10 percent on the amount of income that is attributed to state A, which results in $55,000 of tax imposed by state A.

(ii) *Allocation.* (A) States A, B, and C impose income taxes of $69,000 which must be allocated to the classes of gross income upon which the taxes are imposed. A portion of X's federal income tax dedution of $55,000 for state A income tax is definitely related and thus allocable to the class of gross income consisting of foreign source portfolio dividends. A definite relationship exists between a deduction for state income tax and portfolio dividends when a state includes portfolio dividends in state taxable income approtionable to the state, but determines state taxable income by applying an apportionment fraction that excludes the factors of the corporations paying those dividends. By applying a state apportionment fraction that excludes factors of the corporations paying portfolio dividends to apportionable taxable income that includes the $100,000 of foreign source portfolio dividends, $50,000 (50 percent of the $100,000) of the portfolio dividends is attributed to X's activities in state A and subjected to state A income tax. Applying the state A income tax rate of 10 percent to the $50,000 of foreign source portfolio dividends subjected to state A income tax, $5,000 of X's $55,000 total state A income tax liability is definitely related and allocable to a class of gross income consisting of the foreign source portfolio dividends. Since under the look-through rules of section 904(d)(3) the foreign source portfolio dividends from the first-tier CFCs are included within the general limitation described in section 904(d)(1)(I), the $5,000 of state A tax on foreign source portfolio dividends is allocated entirely to foreign source general limitation income and, therefore, is not apportioned. (If the total amount of state A tax imposed on foreign source portfolio dividends were to exceed the actual amount of X's state A income tax liability (for example, due to net operating losses), the actual amount of state A tax would be allocated entirely to those foreign source portfolio dividends.) After allocation of a portion of the state A tax to portfolio dividends, $50,000 ($55,000−$5,000) of state A tax remains to be allocated.

(B) A total of $64,000 (the aggregate of the $50,000 remaining state A tax, and the $10,000 and $4,000 of taxes imposed by states B and C, respectively) is to be allocated (as provided in Example 25) by comparing U.S. source taxable income (as determined under the Code) with the aggregate of the state taxable incomes determined by states A, B, and C (after reducing state apportionable taxable incomes by the amount of any portfolio dividends included in apportionable taxable income to which tax has been specifically allocated). X's state A taxable income, after reduction by the $50,000 of portfolio dividends taxed by state A, equals $500,000. X also has taxable income of $200,000 and $200,000 in states B and C, respectively. In the aggregate, therefore, states A, B, and C tax $900,000 of X's income, after excluding state taxable income attributable to portfolio dividends. Since X has only $800,000 of U.S. source taxable income for federal income tax purposes, it is presumed that sate income taxes are imposed on $100,000 of foreign source income. The remaining deduction of $64,000 for state income taxes is therefore related and allocable to both foreign source and domestic source income and is subject to apportionment.

(iii) *Apportionment.* For purposes of computing the foreign tax credit limitation, X's income is comprised of one statutory grouping, foreign source general limitation income, and one residual grouping, gross income from sources within the United States. The remaining state income tax deduction of $64,000 must be apportioned between these two groupings on the basis of relative amounts of foreign source general limitation taxable income and U.S. source taxable income subject to state taxation. In this case, the $64,000 of state income taxes is

considered to be imposed on $800,000 of domestic source income and $100,000 of foreign source general limitation income and is apportioned as follows:

State income tax deduction apportioned to foreign source general limitation income (statutory grouping): $64,000 × ($100,000/$900,000)	$7,111
State income tax deduction apportioned to income from sources within the United States (residual grouping): $64,000 × ($800,000/$900,000)	56,889
Total apportioned state income tax deduction	$64,000

Of the total state income taxes of $69,000, the amount allocated and apportioned to foreign source general limitation income equals $12,111 ($5,000 + $7,111). The total amount of state income taxes allocated and apportioned to U.S. source income equals $56,889.

Example 29—Income Taxes—(i) *Facts.* (A) P, a domestic corporation, is a manufacturer and distributor of electronic equipment with operations in states F, G, and H. P also has a branch in country Y which manufactures and distributes the same type of electronic equipment. In addition, P has three wholly owned subsidiaries, US1, US2, and FS, the latter a controlled foreign corporation ("CFC") as defined in section 957(a) of the Code. P also owns stock representing 10 to 50 percent of the vote and value of various other first-tier CFCs that derive exclusively foreign source general limitation income.

(B) In 1988, P derives $1,000,000 of federal taxable income (without taking into account the deduction for state income taxes), which consists of $250,000 of foreign source general limitation income and $750,000 of U.S. source income. The foreign source general limitation income consists of a $25,000 subpart F inclusion with respect to FS, $150,000 of dividends from the other first-tier CFCs deriving exclusively foreign source general limitation income, in which P owns stock representing 10 to 50 percent of the vote and value, and $75,000 of manufacturing and sales income derived by P's U.S. operations and country Y branch. The $750,000 of U.S. source income consists of manufacturing and sales income derived by P's U.S. operations.

(C) For federal income tax purposes, US1 derives $75,000 of taxable income, before deduction for state income taxes, which consists entirely of U.S. source income. US2, a so-called "80/20" corporation described in section 861(c)(1), derives $250,000 of federal taxable income before deduction for state or foreign income taxes, all of which is derived from foreign operations and consists entirely of foreign source general limitation income. FS is not engaged in a U.S. trade or business and derives $550,000 of foreign source general limitation income before deduction for foreign income taxes.

(D) State F imposes a corporate income tax of 10 percent of P's state F taxable income, which is determined by formulary apportionment of the total taxable income attributable to P's worldwide unitary business. State F determines P's taxable income for state F tax purposes by first making adjustments to the taxable income, as determined for federal income tax purposes, of the members of the unitary business group to determine the total taxable income of the group. State F then computes P's state taxable income by attributing a portion of that unitary business taxable income to activities of P that are conducted in state F. State F does this by multiplying the unitary business taxable income (federal taxable income with state adjustments) by a fraction (the "state apportionment fraction") that compares the relative amounts of the unitary business group's payroll, property, and sales (the "factors") in state F with the payroll, property, and sales of the unitary business group. P is the only member of its unitary business group that has state F factors and that is thereby subject to state F income tax and filing requirements. State F defines the unitary business group to include any corporation more than 50 percent of which is directly or indirectly owned by a state F taxpayer and is engaged in the same unitary business. P's unitary business group, therefore, includes P, US1, US2, and FS, but does not include the 10 to 50 percent owned CFCs. The income of the unitary business group excludes intercompany dividends between members of the unitary business group and subpart F inclusions with respect to a member of the unitary business group. Dividends paid from nonmembers of the unitary group (the 10 to 50 percent owned CFCs) for state F tax purposes are referred to as "portfolio dividends" and are included in taxable income of the unitary business. None of the factors (in state F or worldwide) of the corporations paying portfolio dividends are included in the state F apportionment fraction for purposes of apportioning total taxable income of the unitary business to P's state F activities.

(E) After state adjustments to the taxable income of the unitary business group, as determined under federal tax principles, the total taxable income of P's unitary business group equals $2,000,000, consisting of $1,050,000 of P's income ($100,000 of foreign source manufacturing and sales income, $150,000 of foreign source portfolio dividends, and $800,000 of U.S. source manufacturing and sales income, but excluding the $25,000 subpart F inclusion attributable to FS since FS is a member of the unitary business group), $100,000 of US1's income (from sales made in the United States), $275,000 of US2's income (from an active business outside the United States), and $575,000 of FS's income. The differences between taxable income under federal tax principles and state F apportionable taxable income for P, US1, US2, and FS represent adjustments to taxable income under federal tax principles that are made pursuant to the tax laws of state F.

(F) The taxable income for each member of the unitary business group under federal tax principles and state law principles is summarized in the following table. (The items of income listed in the "Federal" column of the table refer to taxable income before deduction for state income tax.)

	Federal	State F
P		
U.S. source income	$750,000	$800,000
Foreign source general limitation income:		
Portfolio dividends	150,000	150,000
Subpart F income	25,000	0
Manufacturing and sales income	75,000	100,000
Total taxable income	1,000,000	1,050,000
US1		
U.S. source income	75,000	100,000
US2		
Foreign source general limitation income	250,000	275,000
FS		
Foreign source general limitation income	550,000	575,000
Taxable income of the unitary business group		2,000,000

(G) State F deems P to have state F taxable income of $500,000, which is determined by multiplying the total taxable income of the unitary business group ($2,000,000) by the group's state F apportionment fraction, which is assumed to be 25 percent in these facts. P's state F taxable income is then multiplied by the state F tax rate of 10 percent, resulting in a state F tax liability of $50,000. State G and state H, unlike state F, do not tax portfolio dividends. Although state G and state H apportion taxable income, respectively, on the basis of an apportionment fraction that compares state factors to total factors, state G and state H, unlike state F, do not apply a unitary business theory and consider only P's taxable income and factors in computing P's taxable income. P's taxable income under state G law equals $300,000, which is subject to a 5 percent tax rate resulting in a state G tax liability of $15,000. P's taxable income under state H law is $300,000, which is subject to a tax rate of 2 percent resulting in a state H tax liability of $6,000. P has a total federal income tax deduction for state income taxes of $71,000 ($50,000 + 15,000 + 6,000).

(ii) *Allocation.* (A) P's deduction of $71,000 for state income taxes is definitely related and allocable to the gross income with respect to which the taxes are imposed. Adjustments may be necessary, however, before aggregate state taxable incomes can be compared with U.S. source taxable income on the federal income tax return in the manner described in Examples 25 and 26. In allocating P's deduction for state income taxes, it is necessary first to determine the portion, if any, of the deduction that is definitely related and allocable to a particular class of gross income. A definite relationship exists between a deduction for state income tax and dividend income when a state includes portfolio dividends in state taxable income apportionable to the taxpayer's activities in the state, but determines state taxable income by applying an apportionment formula that excludes the

factors of the corporations paying portfolio dividends.

(B) In this case, $150,000 of foreign source portfolio dividends are subject to a state F apportionment fraction of 25 percent, which results in a total of $37,500 of state F taxable income attributable to such dividends. As illustrated in Example 28, $3,750 ($150,000 × 25 percent state F apportionment percentage × 10 percent state F tax rate) of P's state F income tax is definitely related and allocable to a class of gross income consisting entirely of the foreign source portfolio dividends. Since under the look-through rules of section 904(d)(3) the foreign source portfolio dividends paid by first-tier CFCs are included within the general limitation described in section 904(d)(1)(I), the $3,750 of state F tax on foreign source portfolio dividends is allocated entirely to foreign source general limitation income and, therefore, is not apportioned.

(C) After reducing state F taxable income of the unitary business group by the taxable income attributable to portfolio dividends, P's remaining state F taxable income equals $462,500 ($500,000 − $37,500), the portion of the taxable income of the unitary business that state F attributes to P's activities in state F. Accordingly, in order to allocate and apportion the remaining $46,250 of state F tax ($50,000 of state F tax minus the $3,750 of state F tax allocated to foreign source portfolio dividends), it is necessary first to determine if state F is taxing only P's non-unitary taxable income (as defined below) or is imposing its tax partly on other unitary business income that is attributed under state F law to P's activities in state F. P's state F non-unitary taxable income is computed by applying the state F apportionment formula, solely on the basis of P's income (excluding portfolio dividends) and state F apportionment factors. If the state F taxable income (after reduction by the portfolio dividends attributed to state F) attributed to P under state F law exceeds P's non-unitary taxable income, a portion of the state F tax must be allocated and apportioned on the basis of the other unitary business income that is attributed to and taxable to P under state F law. If P's non-unitary taxable income equals or exceeds the $462,500 of remaining state F taxable income, it is presumed that state F is only taxing P's non-unitary taxable income, so that the entire amount of the remaining state F tax should be allocated and apportioned in the manner described in Example 25.

(D) If P's non-unitary taxable income is less than the $462,500 of remaining state F taxable income (after reduction for the $37,500 of state F taxable income attributable to portfolio dividends), it is presumed that state F is attributing to P, and taxing P upon, other unitary business income. In such a case, it is necessary to determine if state F is attributing to P, and imposing its income tax on, a part of the foreign source income that would be generally presumed under separate accounting to be the income of foreign affiliates and 80/20 companies included in the unitary group, or whether state F is limiting the income it attributes to P, and its taxation of P, to the U.S. source income that would be generally presumed under separate accounting to be the income of domestic members of the unitary group.

(E) Assume for purposes of this example that the non-unitary taxable income attributable to P equals $396,000, computed by multiplying P's state F taxable income of $900,000 (P's state F taxable income (before state F apportionment) of $1,050,000 less the $150,000 of foreign source portfolio dividends) by P's non-unitary state F apportionment fraction, which is assumed to be 44 percent. Because P's non-unitary taxable income of $396,000 is less than the $462,500 of remaining state F taxable income, state F is presumed to be attributing to P and taxing the income that would have been generally attributed under separate accounting to P's affiliates in the unitary group. To determine if state F tax is being imposed on members of the unitary group (other that P) that produce foreign source income, it is necessary to compute a hypothetical state F taxable income for all companies in the unitary group with significant U.S. operations. (For this purpose, the hypothetical group of companies with significant domestic operations is referred to as the "water's edge group.") State F is presumed to be attributing to P and taxing income that would have been generally attributable under separate accounting to foreign corporations and 80/20 companies to the extent that the remaining state F taxable income ($462,500) of P exceeds the hypothetical state F taxable income that would have been attributed under state F law to P if state F had defined the unitary group to be the water's edge group.

(F) The members of the water's edge group would have been P and US1. The unitary business income of this water's edge group is $1,000,000, the sum of $900,000 (P's state F taxable income (before state F apportionment) of $1,050,000 less the $150,000 of foreign source portfolio dividends) and $100,000 (US1's state F taxable income). For purposes of this example, the state F apportionment fraction determined on a unitary basis for this water's edge group is assumed to equal 40 percent, the average of P and US1's state F payroll, property, and sales factor ratios (the water's edge group's state F factors over its worldwide factors). Applying this apportionment fraction to the $1,000,000 of unitary business income of the water's edge group yields state F water's edge taxable income of $400,000. The excess of the remaining $462,500 of P's state F taxable income over the $400,000 of P's state F water's edge taxable income equals $62,500, and is attributable to the inclusion of US2 and FS in the unitary group. The state F tax attributable to the $62,500 of taxable income attributed to P under state F law, and that would have generally been attributed to US2 and FS under non-unitary accounting, equals $6,250 and is allocated entirely to a class of gross income consisting of foreign source general limitation income, because the income of FS and US2 consists entirely of such income. After the $6,250 of state F tax attributable to US2 and FS is subtracted from the remaining $46,250 of net state F tax, P has $40,000 of state F tax remaining to be allocated and apportioned.

(G) To the extent that the remainder of P's state F taxable income ($400,000) exceeds P's non-unitary state F taxable income ($396,000), it is presumed that state F is attributing to and imposing on P a tax on U.S. source income that would have been attributed under separate accounting to members of the water's edge group other than P. In these facts, the $4,000 difference in P's state F taxable income results from the inclusion of US1 in the unitary group. The $400 of P's state F tax attributable to this $4,000 is allocated entirely to P's U.S. source income. P's remaining $39,600 of state F tax ($40,000 of P's state F tax resulting from the attribution of P of income that would have been attributed under non-unitary accounting to other members of the water's edge group, minus $400 of state F tax attributable to US1 and allocated to P's U.S. source income) is the state F tax attributable to P's non-unitary state F taxable income that is to be allocated and apportioned together with P's state G tax of $15,000 and state H tax of $6,000 as illustrated in Example 25.

(H) In allocating the $60,600 of state tax liabilities ($39,600 state F tax attributable to P's non-unitary state F income + $15,000 state G tax + $6,000 state H tax) under Example 25, P's state taxable income in state G and state H ($300,000 + $300,000) must be added to P's non-unitary state F taxable income ($396,000). The resulting $996,000 of combined state taxable incomes is compared with $750,000 of U.S. source income on P's federal income tax return. Because P's combined state taxable incomes exceeds P's federal U.S. source taxable income, it is presumed that the remaining $60,600 of P's total state income taxes is imposed in part on foreign source income. Accordingly, P's remaining deduction of $60,600 ($39,600 + $15,000 + $6,000) for state income taxes is related and allocable to both P's foreign source and domestic source income and is subject to apportionment.

(iii) *Apportionment.* The $60,600 of state taxes (the remaining $39,600 of state F tax + $15,000 of state G tax + $6,000 of state H tax) must be apportioned between foreign source general limitation income and U.S. source income for federal income tax purposes. This apportionment is based upon the relative amounts of foreign source general limitation taxable income and U.S. source taxable income comprising the $996,000 of income subject to tax by the states, after reducing the total amount of income subject to tax by the portfolio dividends and the income attributed to P under state F law that would have been attributed under arm's length principles to other members of P's state F unitary business group. The deduction for the $60,600 of state income taxes is apportioned as follows:

State income tax deduction apportioned to foreign source general limitation income (statutory grouping): $60,600 x ($246,000/$996,000)	$14,967
State income tax deduction apportioned to income from sources within the United States (residual grouping): $60,600 x ($750,000/$996,000)	45,633
Total apportioned state income tax deduction	60,600

Of the total state income taxes of $71,000, the amount allocated and apportioned to foreign source general limitation income is $24,967—the sum of $14,967 of state F, state G, and state H taxes apportioned to foreign source general limitation income, $3,750 of state F tax allocated to foreign source apportionable dividend income, and the $6,250 of state F tax allocated to foreign source general limitation income as the result of state F's worldwide unitary business theory of taxation. The total amount of state income taxes allocated and apportioned to U.S. source income equals $46,033—the sum of the $400 of state F tax attributable to the inclusion of US1 in the state F unitary business group and $45,633 of combined state F, G, and H tax apportioned under the method provided in Example 25.

Example 30—Income Taxes—(i) *Facts.* (A) As in Example 17 of § 1.861–8(g), X is a domestic corporation that wholly owns M, N, and O, also domestic corporations. X, M, N, and O file a consolidated income tax return. All the income of X and O is from sources within the United States, all of M's income is from sources within South America, and all of N's income is from sources within Africa. X receives no dividends from M, N, or O. During the taxable year, the consolidated group of corporations earned consolidated gross income of $550,000 and incurred total deductions of $370,000. X has gross income of $100,000 and deductions of $50,000, without regard to its deduction for state income tax. Of the $50,000 of deductions incurred by X, $15,000 relates to X's ownership of M; $10,000 relates to X's ownership of N; $5,000 relates to X's ownership of O; and the entire $30,000 constitutes stewardship expenses. The remainder of X's $20,000 of deductions (which is assumed not to include state income tax) relates to production of income from its plant in the United States. M has gross income of $250,000 and deductions of $100,000, which yield foreign source taxable income of $150,000. N has gross income of $150,000 and deductions of $200,000, which yield a foreign source loss of $50,000. O has gross income of $50,000 and deductions of $20,000, which yield U.S. source taxable income of $30,000.

(B) Unlike Example 17 of § 1.861–8(g), however, X also has a deduction of $1,800 for state A income taxes. X's state A taxable income is computed by first making adjustments to the federal taxable income of X to derive apportionable taxable income for state A tax purposes. An analysis of state A law indicates that state A law also includes in its definition of the taxable business income of X which is apportionable to X's state A activities, the taxable income of M, N, and O, which is related to X's business. As in Example 25, the amount of apportionable taxable income attributable to business activities conducted in state A is determined by multiplying apportionable taxable income by a fraction (the "state apportionment fraction") that compares the relative amounts of payroll, property, and sales within state A with worldwide payroll, property and sales. Assuming that X's apportionable taxable income equals $180,000, $100,000 of which is from sources without the United States, and $80,000 is from sources within the United States, and that the state apportionment fraction is equal to 10 percent, X has state A taxable income of $18,000. The state A income tax of $1,800 is then derived by applying the state A income tax rate of 10 percent to the $18,000 of state A taxable income.

(ii) *Allocation and apportionment.* In accordance with § 1.1502–4, each corporation must first compute its separate taxable income for purposes of computing the consolidated limitation on the foreign tax credit. Assume that under Example 29, it is determined that X's deduction for state A income tax is definitely related to a class of gross income consisting of income from sources both within and without the United States, and that the state A tax is apportioned $1,000 to sources without the United States, and $800 to sources within the United States. Under Example 17, without regard to the deduction for X's state A income tax, X has a separate loss of ($25,000) from sources without the United States. After taking into account the deduction for state A income tax, X's separate loss from sources without the United States is increased by the $1,000 state A tax apportioned to sources without the United States, and equals a loss of ($26,000), for purposes of computing the numerator of the consolidated foreign tax credit limitation.

Example 31—Income Taxes—(i) *Facts.* Assume that the facts are the same as in Example 29, except that state G requires P to adjust its federal taxable income by depreciating an asset at a different rate than is allowed P under the Internal Revenue Code for the same asset. Before using the methodology of Example 25 to determine whether a portion of its deduction for state income taxes is allocable to a class of gross income that includes foreign source income, P recomputes its taxable income under state G law by using the rate of depreciation that it is entitled to use under the Code, and uses this recomputed amount in applying the methodology of Example 25.

(ii) *Allocation.* P's modification of its state G taxable income is permissible. Under the methdology of Example 25, this modification of state G taxable income will produce a reasonable determination of the portion (if any) of P's state income taxes that is allocable to a class of gross income that includes foreign sources income.

Example 32—Income Taxes—(i) *Facts.* Assume the facts are the same as Example 29, except that P's state F taxable income differs from the amount of its U.S. source income under federal income tax principles solely because state F determines P's state taxable income under a worldwide unitary business theory instead of the arm's length principles applied in the Code. Before using the methodology of Example 25 to determine whether a portion of its deduction for state income taxes is allocable to a class of gross income that includes foreign source income, P recomputes state F taxable income under the arm's length principles applied in the Code. P substitutes that recomputed amount for the amount of taxable income actually determined under state F law in applying the methodology of Example 25.

(ii) *Allocation.* P's modification of state F taxable income does not accurately reflect the factual relationship between the deduction for state F income tax and the income on which the tax is imposed, because there is no factual relationship between the state F income tax and the state F taxable income as recomputed under Code principles. State F does not impose its income tax upon P's income as it might have been defined under the Internal Revenue Code. Consequently, P's modification of state F taxable income is impermissible because it will not produce a reasonable determination of the portion (if any) of P's state income taxes that is allocable to a class of gross income that includes foreign source income.

Example 33—Income Taxes—(1) *Facts.* Assume the same facts as in Example 29, except that state G does not impose an income tax on corporations. Thus only $56,000 of state income taxes ($50,000 of state F income tax and $6,000 of state H income tax) are deductible and required to be allocated and (if necessary) apportioned. As in Example 29, P has $800,000 of aggregate state taxable income ($500,000 of state F taxable income and $300,000 of state H taxable income).

(ii) *Method One.* Assume that P has elected to allocate and apportion its deduction for state income tax under the safe harbor method provided in § 1.861–8 (e)(6)(ii)(D)(*2*) ("Method One").

(A) *Step One—Specific allocation to foreign source portfolio dividends.* P applies the methodology of paragraph (ii) of *Example 28* to determine the portion of the deduction that must be allocated to a class of gross income consisting solely of foreign source portfolio dividends. As illustrated in paragraphs (ii) (A) and (B) of Example 29, $3,750 of the deduction for state F income tax is attributable to the $37,500 of foreign source portfolio dividends attributed under state F law to P's activities in state F. Thus $3,750 of P's deduction for state income tax must be specifically allocated to a class of gross income consisting solely of $37,500 of foreign source portfolio dividends. No apportionment of the $3,750 is necessary. P's adjusted state taxable income is $762,500 (aggregate state taxable income of $800,000 reduced by $37,500 of foreign source portfolio dividends).

(B) *Step Two—Adjustment of U.S. source federal taxable income.* P applies the methodology illustrated in paragraph (ii) of Example 27 (including the rules of UDITPA described therein) to determine the amount of its federal taxable income attributable to its activities in state G. Assume that P determines under this methodology that $300,000 of its federal taxable income is attributable to activities in state G. P's adjusted U.S. source federal taxable income equals $450,000 ($750,000 minus the $300,000 attributed to P's activities in state G).

(C) *Step Three—Allocation.* The portion of P's deduction for state income tax remaining to be allocated equals $52,250 ($56,000 minus the $3,750 specifically allocated to foreign source portfolio dividends). P allocates this portion by applying the methodology

illustrated in paragraph (ii) of Example 25, as modified by paragraph (e)(6)(ii)(D)(*2*)(*iii*) of this section. Thus, P compares its adjusted state taxable inocme (as determined under Step One in paragraph (A) above) with an amount equal to 110% of its adjusted U.S. source federal taxable income (as determined under Step Two in paragraph (B) above). Because P's adjusted state taxable income ($762,500) exceeds 110% of P's adjusted U.S. source federal taxable income ($495,000, or 110% of $450,000), the remaining portion of P's deduction for state income tax ($52,500) must be allocated to a class of gross income that includes both U.S. and foreign source income.

(D) *Step Four—Apportionment.* P must apportion to U.S. source income the portion of the deduction that is attributable to state income tax imposed upon state taxable income in an amount equal to 110% of P's adjusted U.S. source federal taxable income. The remainder of the deduction must be apportioned to foreign source general limitation income.

Amount of deduction to be apportioned	$52,250.00
Less portion of deduction to be apportioned to income from sources within the United States (residual grouping): ($52,250 × ($495,000/$762,500)	$33,919.67
Equals Portion of deduction to be apportioned to foreign source general limitation income (statutory grouping):	$18,330.33

(iii) *Method Two.* Assume that P has elected to allocate and apportion its deduction for state income tax under the safe harbor method provided in § 1.861-8(e)(6)(ii)(D)(*3*) ("Method Two").

(A) *Step One—Specific allocation.* Step One of Method Two is the same as Step One of Method One. Therefore, as described in paragraph (A) of paragraph (ii) above, $3,750 of P's deduction for state income tax must be specifically allocated to a class of gross income consisting solely of $37,500 of foreign source portfolio dividends. No apportionment of the $3,750 is necessary. P's adjusted state taxable income is $762,500 (aggregate state taxable income of $800,000 reduced by $37,500 of foreign source portfolio dividends).

(B) *Step Two—Adjustment of U.S. source federal taxable income.* Step Two of Method Two is the same as Step Two of Method One. Therefore, as described in paragraph (B) of paragraph (ii) above, assume that P determines that $300,000 of its federal taxable income is attributable to activities in state G. P's adjusted U.S. source federal taxable income equals $450,000 ($750,000 minus the $300,000 attributed to P's activities in state G).

(C) *Step Three—Allocation.* The portion of P's deduction for state income tax remaining to be allocated equals $52,250 ($56,000 minus the $3,750 of state F income tax specifically allocated to foreign source portfolio dividends). P allocates this portion by applying the methodology illustrated in paragraph (ii) of Example 25, as modified by paragraph (e)(6)(ii)(D)(*3*)(*iii*) of this section. Thus, P compares its adjusted state taxable income (as determined under Step One in paragraph (A) above) with its adjusted U.S. source federal taxable income (as determined under Step Two in paragraph (B) above). Because P's adjusted state taxable income ($762,500) exceeds P's adjusted U.S. source federal taxable income ($450,000), the remaining portion of P's deduction for state income tax ($52,500) must be allocated to a class of gross income that includes both U.S. and foreign source income.

(D) *Step Four—Apportionment.* P must apportion to U.S. source income the portion of the deduction that is attributable to state income tax imposed upon state taxable income in an amount equal to P's adjusted U.S. source federal taxable income.

Amount of deduction to be apportioned	$52,250.00
Less portion of deduction initially apportioned to income from sources within the United States (residual grouping): $52,250 × ($450,000/$762,500)	30,836.07
Remainder requiring further apportionment: $52,250 × ($312,500/$762,500)	21,413.93

The remainder of $21,413.93 must be further apportioned between foreign source general limitation income and U.S. source federal taxable income in the same proportions that P's adjusted U.S. source federal taxable income and foreign source general limitation income bear to P's total federal taxable income (taking into account the adjustment of U.S. source federal taxable income).

Portion of remainder apportioned to foreign source general limitation income (statutory grouping): $21,413.93 × ($250,000/$700,000)	$7,647.83
Remaining state income tax deduction to be apportioned to income from sources within the United States (residual grouping): $21,413.93 × ($450,000/$700,000)	13,766.10

Of P's total deduction of $56,000 for state income tax, the portion allocated and apportioned to foreign source general limitation income equals $11,397.83—the sum of $7,647.83 apportioned under Step Four and the $3,750.00 specifically allocated to foreign source portfolio dividend income under Step One. The portion of the deduction allocated and apportioned to U.S. source income equals $44,602.17—the sum of the $30,836.07 and the $13,766.10 apportioned under Step Four.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by adding in the appropriate place in the table:

"1.861-8 (e)(6) and (g)	1545-1224."

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Dated: February 20, 1991.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 91-5585 Filed 3-11-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AA82

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of administrative stay.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** on occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). In response to numerous public comments which indicated confusion about the hazard warning provisions of the newly revised Formaldehyde Standard, on December 13, 1988, OSHA announced an administrative stay of paragraphs (m)(1)(i) through (m)(4)(ii) for a period of nine months. OSHA also announced its intention to revoke paragraphs (m)(1)(i) through (m)(4)(ii) and invite comments on replacing them with the Hazard Communication Standard (29 CFR 1910.1200) or another equally protective alternative which would be less confusing to the public (53 FR 50198).

The stay was subsequently extended (54 FR 35639, August 29, 1989; 55 FR 24070, June 13, 1990; 55 FR 32616, August 10, 1990; 55 FR 51698, December 17, 1990). OSHA is completing its

reevaluation of the need to stay these paragraphs. More time is needed to complete this evaluation. Consequently the stay is extended an additional 90 days so that OSHA may complete this process. While this stay is in effect, affected employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

EFFECTIVE DATE: The administrative stay of 29 CFR 1910.1048 (m)(1(i) through (m)(4)(ii) will be effective until June 9, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington DC 20210.

This action is taken pursuant to section 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1900; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1-90 (55 FR 9033) and 29 CFR part 1911.

List of Subjects in 29 CFR Part 1910

Cancer, Chemicals, Formaldehyde, Health, Occupational Safety and Health, Risk assessment.

§ 1910.1048 [Stayed in Part]

Therefore, 29 CFR 1910.1048 (m)(1(i) through (m)(4)(ii) is stayed until June 9, 1991.

Signed at Washington, DC this 7th day of March, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 91-5949 Filed 3-8-91; 2:13 pm]

BILLING CODE 4510-26-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301-10 and 302-11

[FTR Amdt. 15]

RIN 3090-AE24

Federal Travel Regulation; Relocation Income Tax Allowance

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The Federal and State tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal and State income tax brackets and rates. The Federal and State tax tables contained in this rule are for calculating the 1991 RIT allowances to be paid to relocating Federal employees. This final rule also makes an editorial change to § 301-10.3 of the Federal Travel Regulation to reflect the implementation of the worldwide lodgings-plus per diem system.

EFFECTIVE DATE:

a. The change to § 301-10.3(b)(2) is effective December 1, 1990.

b. The new tax tables are effective January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Clauson, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects

41 CFR Part 301-10

Government employees, Travel, Travel allowances, Travel and transportation expenses.

41 CFR Part 302-11

Government employees, Income Taxes, Relocation allowances and entitlements, Transfers, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR parts 301-10 and 302-11 are amended as set forth below.

PART 301-10—SOURCES OF FUNDS

1. The authority citation for part 301-10 continues to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

2.Section 301-10.3 is amended by revising paragraph (b)(2) to read as follows:

§ 301-10.3 Advance of funds.

* * * * *

(b) * * *

(2) *Allowable amount for meals and incidental expenses (M&IE).* The amount advanced for meals and incidental expenses shall not exceed the prescribed M&IE rate or other amount authorized by the agency under 41 CFR parts 301-7 or 301-8, as appropriate.

* * * * *

PART 302-11—RELOCATION INCOME TAX (RIT) ALLOWANCE

3. The authority citation for part 302-11 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747); E.O. 12466, February 27, 1984 (49 FR 7349).

4. Appendixes A, B, and C to part 302-11 are amended by adding the following tables at the end of each appendix, respectively:

APPENDIX A TO PART 302-11—FEDERAL TAX TABLES FOR RIT ALLOWANCE

* * * * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1990

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302-11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 1990.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$5,556	$25,167	$9,824	$35,312	$12,652	$44,759	$6,885	$23,089
28	25,167	51,042	35,312	75,233	44,759	84,283	23,089	50,147
33	51,042	112,588	75,233	170,564	84,283	200,559	50,147	148,107
28	112,588		170,564		200,559		148,107	

APPENDIX B TO PART 302-11—STATE TAX TABLES FOR RIT ALLOWANCE

* * * * * * *

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1990

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302-11.8(e)(1). This table is to be used for employees who received covered taxable reimbursements during calendar year 1990.

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1] [2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
1. Alabama	5	5	5	5
2. Alaska	0	0	0	0
3. Arizona	3.8	4.4	5.25	7
If single status [3]	4.4	5.25	6.5	7
4. Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
5. California	2	6	9.3	9.3
If single status [3]	6	9.3	9.3	9.3
6. Colorado	5	5	5	5
7. Connecticut	0	0	0	0
8. Delaware	6	7.6	7.7	7.7
9. District of Columbia	8	9.5	9.5	9.5
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8	9.5	10	10
If single status [3]	9.5	10	10	10
13. Idaho	7.8	8.2	8.2	8.2
14. Illinois	3	3	3	3
15. Indiana	3.4	3.4	3.4	3.4
16. Iowa	6.8	8.8	9.98	9.98
17. Kansas	3.65	5.15	5.15	5.15
18. Kentucky	6	6	6	6
19. Louisiana	4	4	6	6
20. Maine	4.5	8.5	8.5	8.5
If single status [3]	8.5	8.5	8.5	8.5
21. Maryland	5	5	5	5
22. Massachusetts	5.95	5.95	5.95	5.95
23. Michigan	4.6	4.6	4.6	4.6
24. Minnesota	6	8	8	8.5
If single status [3]	8	8	8.5	8.5
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6
27 Montana	6	10	11	11
If single status [3]	8	10	11	11
28. Nebraska	3.361	5.21	6.41	6.41
If single status [3]	5.21	6.41	6.41	6.41
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	2	2.5	3.5	3.5
32. New Mexico	3.8	6.9	7.7	8.5
If single status [3]	5.8	8.5	8.5	8.5
33. New York	5	7.375	7.375	7.375
If single status [3]	7.375	7.375	7.375	7.375
34. North Carolina	6	7	7	7
35. North Dakota	6.67	10.67	12	12
If Single status [3]	8	10.67	12	12
36. Ohio	2.972	4.457	5.201	6.9
37. Oklahoma	4	7	7	7
If single status [3]	7	7	7	7
38. Oregon	9	9	9	9
39. Pennsylvania	2.1	2.1	2.1	2.1
40. Rhode Island	22.96 percent of Federal income tax liability [4]			
41. South Carolina	7	7	7	7

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1] [2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7.2	7.2	7.2	7.2
46. Vermont	28 percent of Federal income tax liability [4]			
47. Virginia	5	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	4	4.5	6.5	6.5
If single status [3]	4	6	6.5	6.5
50. Wisconsin	6.55	6.93	6.93	6.93
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

APPENDIX C TO PART 302–11—FEDERAL TAX TABLES FOR RIT ALLOWANCE—YEAR 2

* * * * * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1991

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1983, 1984, 1985, 1986, 1987, 1988, 1989, or 1990.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$5,754	$26,242	$10,177	$36,611	$13,093	$46,770	$7,120	$23,977
28	26,242	55,330	36,611	78,894	46,770	94,598	23,977	47,908
31	55,330	.....	78,894	.....	94,598	.....	47,908	.....

Dated: March 4, 1991

Rebekah T. Johnson,

Deputy Administrator of General Services.

[FR Doc. 91-5786 Filed 3-11-91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6838

[G-910-G1-0410-4214-10; NMNM 86032]

Transfer of Federal Mineral Interest Underlying Private Surface Estate for the Ambrosia Lake Uranium Mill Tailings Site; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order permanently transfers 234.70 acres of Federal mineral estate to the Department of Energy in accordance with the terms of the Uranium Mill Tailings Remedial Action Amendments Act of 1988.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: James Olsen, BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504–1449, 505–988–6109.

By virtue of the authority vested in the Secretary of the Interior by section 106 of the Uranium Mill Tailings Radiation Control Act of 1978, as amended by the Uranium Mill Tailings Remedial Action Amendments Act of 1988, 42 U.S.C. 7916(2)(F), it is ordered as follows:

1. Subject to valid existing rights, the following described Federal mineral estate is hereby permanently transferred to the Department of Energy for the Ambrosia Lake Uranium Mill Tailings Site, and as a result of this transfer, this mineral estate is no longer subject to the operation of the mining and mineral leasing laws:

New Mexico Principal Meridian

A certain tract or parcel of land lying and being situated in sec. 28, T. 14 N., R. 9 W., being more particularly bounded and described as follows, to wit:

Beginning at a point for the southwest corner of said tract or parcel of land, said same point being the section corner common to secs. 28, 29, 32 and 33, T. 14 N., R. 9 W., set by Albuquerque Engineering and marked by a brass cap monument;

Thence N. 00°19'29" E., along the westerly line of said tract or parcel of land and the section line common to secs. 28 and 29, T. 14 N., R. 9 W., a distance of 2,955.39 feet to a point for the northwest corner;

Thence S. 90°00'00" E., along the northerly line of said tract or parcel of land a distance of 1,499.67 feet to a point on the westerly line of Mineral Survey Ann Lee No. 14;

Thence S. 00°19'29" W., along said westerly line a distance of 531.60 feet to an angle point, said same point being the southwest corner of Mineral Survey Ann Lee No. 14;

Thence N. 89°05'29" E., a distance of 1,500.00 feet to an angle point, said same point being a point common to Mineral Surveys Ann Lee Nos. 14, 22, and 23;

Thence S. 00°19'29" W., a distance of 600.00 feet to an angle point, said same point being the southwest corner of Mineral Survey Ann Lee No. 22;

Thence N. 89°05'29" E., a distance of 1,175.88 feet to a point on the easterly line of said tract or parcel of land;

Thence S. 00°46'00" W., along said easterly line a distance of 1,851.60 feet to a point for the southeast corner of said tract or parcel of land, said same point lying on the section line common to secs. 28 and 33, T. 14 N., R. 9 W.;

Thence S. 89°47'49" W., along said section line a distance of 4,160.80 feet to a point for the section corner common to secs. 28, 29, 32 and 33, T. 14 N., R. 9 W., said same point being the true point and place of beginning.

The tract as described contains approximately 234.70 acres in McKinley County.

2. The transfer of the above described Federal mineral estate to the Department of Energy vests in that Department the full management, jurisdiction, responsibility, and liability for such subsurface estate and all activities conducted thereon, except as provided in paragraph 3.

3. The Secretary of the Interior shall retain the authority to administer any existing claims, rights, and interests in this land and in the subsurface mineral estate that were established before the effective date of the transfer.

Dated: February 27, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-5757 Filed 3-11-91; 8:45 am]

BILLING CODE 4310-FB-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-546; RM-7526]

Radio Broadcasting Services; Live Oak, FL

AGENCY: Federal Communications Commission .

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C1 for Channel 251C2 at Live Oak, Florida, and modifies the license for Station WQHL(FM) to specify operation on the higher powered channel at the request of Day Communications, Inc. *See* 55 FR 48868, November 23, 1990. Channel 251C1 can be allotted to Live Oak in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.5 kilometers (14.6 miles) southwest, in order to avoid a short-spacing to a construction permit for Station WUVU-FM, Channel 250C2, St. Augustine, Florida, and a pending proposal to allot Channel 254A to Statenville, Georgia. The coordinates for this allotment are North Latitude 30-07-02 and West Longitude 83-07-29. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-546, adopted February 25, 1991, and released March 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 251C2 and adding Channel 251C1 at Live Oak.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5700 Filed 3-11-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-568; RM-7476]

Radio Broadcasting Services; Barbourville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 241C3 for Channel 241A at Barbourville, Kentucky, and modifies the license of Station WYWY(FM) to specify operation on the higher class channel, at the request of Barbourville Community Broadcasting Company. *See* 55 FR 49096, November 26, 1990. Channel 241C3 can be allotted to Barbourville in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.7 miles) west, in order to avoid a short-spacing to Station WMXK(FM), Channel 240A, Morristown, Tennessee. The coordinates are North Latitude 36-52-32 and West Longitude 83-55-09. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-568, adopted February 25, 1991, and released March 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 241A and adding Channel 241C3 at Barbourville.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5701 Filed 3-11-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 48
Tuesday, March 12, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-91-003]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Increase in Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposed to increase the fees charged for services provided under the dairy grading program. The program. The program is a voluntary, user-fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The proposed increase would result in a fee of $41.60 per hour for continuous resident services and $46.60 per hour for nonresident services between the hours of 6 a.m. and 6 p.m. These proposed fees represent a $5.60 per hour increase for both resident and nonresident services. The fee for nonresident services between the hours of 6 p.m. and 6 a.m. would be $51.40, representing an increase of $6.40 per hour.

The fees need to be increased to recapitalize the program, rebuild the required operating reserve, and provide the necessary funding to restore the supervision and training activities that had been curtailed because of funding problems.

DATES: Comments must be received on or before April 11, 1991.

ADDRESSES: Comments should be sent to: Office of the Director, USDA/AM/Dairy Division, room 2968-S, P.O. Box 96456, Washington, DC 20090-6456.

Comments received will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Section, room 2750-South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 382-9381.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512-1 and has been classified a "non-major" rule under the criteria contained therein.

The proposed rule also been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Administrator, Agricultural Marketing Service, has determined that if promulgated it would not have a significant economic impact on a substantial number of small entities. The proposed changes will not significantly affect the cost per unit for grading and inspection services. The Agricultural Marketing Service estimates that overall this rule will yield an additional $385,000 during 1991. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services tha facilitate marketing and help consumers obtain in quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the cost of maintaining the program.

Since the costs of the grading program are covered entirely by user fees, it is essential that fees be increased to cover the cost of maintaining a financially self-supporting program. During the early 1980's, the dairy grading program was severely taxed in meeting the needs of the dairy price support program. CCC purchases increased from 1.1 billion pounds milk equivalent in the 1978-79 marketing year to 16.6 billion pounds in 1982-83. To accommodate this increased workload, the Dairy Grading Section had to expand its staff significantly.

Purchases remained high through 1986, and then dropped to 5.6 billion pounds during the 1986-87 marketing year. By 1988, the dairy grading workload associated with the price support program and dropped to the point that it was necessary to cut the grading staff by about half. Staff reductions were made both in Washington and in the field, and three of the four field offices were closed. By the time the grading program was totally restructured, the trust fund reserve had been depleted and a debt of about $1 million incurred. To deal with the funding problem, grading fees have been increased substantially since 1988—131 percent for the resident programs and 116 percent for the nonresident programs. The most recent fee increases were made effective January 13, 1991, by a final rule published on January 9, 1991, in the **Federal Register** at 56 FR 773.

The fee increases have not improved materially the financial situation, and most of the $1 million debt remains. Viable opportunities for further cutting the program's overhead do not exist. In an effort to generate additional revenue, field staff who normally do supervision and training have been assigned instead to grading activities. This situation could undermine the program.

In order to maintain a viable program, additional resources are needed for the Dairy Grading Section. The funds are necessary to repay the nearly $1 million debt and associated interest charges, rebuild a four-month operating reserve of about $1.9 million, and provide the necessary capital (about $450,000 annually) to restore the supervision and training activities that had been curtailed.

Proposed Changes

This rule proposes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increase the hourly fee for nonresident services from $41.00 to $46.60 for services performed between 6 a.m. and 6 p.m. and from $45.00 to $51.40 for services performed between 6 p.m. and 6. a.m.

The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel, plus travel costs.

2. Increase the hourly fee for continuous resident services from $36.00 to $41.60.

The resident hourly rate is charged to those who are using grading and inspection services performed by an

inspector or grader assigned to a plant on a continuous, year-round, resident basis.

Timing of any Fee Increase

It is contemplated that any fees that might be implemented as a result of this action would be implemented on an expedited basis in order to start the recapitalization effort, rebuild the reserve and restore supervision and training. Accordingly, it is anticipated that the fee increases, if adopted, would become effective upon publication or very soon after publication of the final rule in the **Federal Register** and that postponing the effective date of the final rule until 30 days after publication in the **Federal Register** would not occur. An approximate effective date would be May 19, 1991.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58, subpart A, be amended as follows:

PART 58—[AMENDED]

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

1. The authority citation for part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in this section and §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $46.60 for service performed between 6 a.m. and 6. p.m., and $51.40 for service performed between 6 p.m. and 6. a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in Sections 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $41.60 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Signed at Washington, DC, on: March 7, 1991.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 91–5790 Filed 3–11–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–91–7]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 12, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____ 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591: telephone (202) 267–9688.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 6, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26493.

Petitioner: American Diabetes Association (ADA).

Regulations Affected: 14 CFR 67.13, 67.15, 67.17 and 67.19

Description of Petition: To amend Sections 67.13, 67.15, 67.17 and 67.19 to allow individuals with insulin-treated diabetes mellitus to be issued medical certificates on a case-by-case basis. The ADA further requests the creation of an FAA-appointed medical task force to develop a medical protocol capable of permitting meaningful case-by-case review.

Petitioner's Reason for the Request: The petitioner believes that consistent with its mission of improving the well-being of all people with diabetes and their families, the ADA is committed to combatting blanket policies, both in the public and private sectors, which unduly restrict individuals with diabetes in their pursuit of useful and productive lifestyles.

Docket No: 26438.

Petitioner: Ralph Seeley.

Regulations Affected: 14 CFR Section 91.215.

Description of Petition: To abolish or modify the 30-mile encoding transponder requirement around Seattle-Tacoma International Airport.

Petitioner's Reason for the Request: The petitioner believes the rule promotes inefficiency in that pilots on the lower end of the economic ladder without the financial wherewithal to purchase and install encoding

transponders are forced to fly 30 miles off course, and believes the rule serves no legitimate government function.

Petitions for Rulemaking

Docket No.: 26441.
Petitioner: Mr. Peter G. Tchamitch.
Regulations Affected: 14 CFR 91.113 (d) and (e).
Description of Petition: To amend § 91.113 to expand upon the existing right-of-way rules to provide for the special case of aircraft approaching (on what appears to be a collision course) at close quarters and at the same altitude. The new rule would require aircraft turning right to climb and aircraft turning left to descend.
Petitioner's Reason for the Request: The petitioner believes that there are many close-in situations in which pilots might feel forced to deviate from § 91.113 and have precious few seconds to decide whether or not to do so. The petitioner believes the essence of the new rule is that it is very easy to apply and that its application would deal with all conceivable collision courses no matter which way each pilot turned in any of those situations.

[FR Doc. 91-5776 Filed 3-11-91; 8:45 am]
BILLING CODE 4910-13-M

[Docket No. 91-ASO-7]

14 CFR Part 71

[Airspace Docket No. 91-ASO-7]

Proposed Revision of Transition Areas, Fort Payne, Al

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Fort Payne, AL Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve the Isbell Field Airport based on the Fort Payne nondirectional radio bacon (NDB). Due to rising terrain, especially east and north of the airport, it is necessary to increase the size of the existing 700-ft. transition area in order to provide controlled airspace protection for instrument flight rules (IFR) aeronautical operations. Additonally, a correction would be made in the latitude/longitude coordinates for the NDB.

DATES: Comments must be received on or before: April 30, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Vaiation Administration, Manager, System Management Branch, ASO-530, Docket No 91-ASO-7, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested parties are invited to participate in this proposed rulemaing by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ASO-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Fort Payne, AL Transition Area. An NDB SIAP has been developed to serve Isbell Field Airport predicated on the Fort Payne NDB. This action would increase the size of the existing transition area in order to provide the controlled airspace necessary for protection of IFR aeronautical operations. Also, a correction would be made in the latitude/longitude coordinate position of the Fort Payne NDB. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Fort Payne, AL [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Isbell Field Airport (lat. 34°28'20" N., long. 85°43'25" W.); within 9.5 miles northwest and 5 miles southeast of the Fort Payne NDB (lat. 34°31'16" N., long 85°40'24" W.) 040° bearing, extending from the 8.5-mile radius area to 18.5 miles northeast of the NDB.

Issued in East Point, Georgia, on February 26, 1991.

James G. Walters,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 91-5783 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 216

RIN 3220-AA15

Eligibility for Annuity

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to revise part 216, Eligibility for an Annuity, to reflect amendments to the Railroad Retirement Act which became effective in 1981 and 1983. The proposed action would also revise the rules concerning eligibility in a manner to make them easier to use and understand.

DATES: Comments must be submitted on or before April 11, 1991.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush, Chicago, Illinois 60611, (312) 751-4513, FTS 386-4513.

SUPPLEMENTARY INFORMATION: Part 216 of the Board's regulations contains the eligibility requirements for annuities under the Railroad Retirement Act of 1974, as amended. Amendments made by the Omnibus Budget Reconciliation Act of 1981 (OBRA) (Pub. L. 97-36) to the Railroad Retirement Act added, as new categories of beneficiaries under the Act, divorced spouses, surviving divorced spouses, and remarried widow(er)s. Eligiblity requirements for these types of annuities are found in proposed subparts F and G. Section 1116(b)(2) of the OBRA liberalized the test to establish a current connection with the railroad industry for purposes of eligibility for the supplemental annuity and survivor annuities. Eligibility requirements reflecting these amendment are found in proposed subpart B. Section 1117(a) of the OBRA restricted future supplemental annuity eligibility to employees with some service prior to October 1981. See proposed subpart E. Section 104(a) of the Railroad Retirement Solvency Act of 1983 (Pub. L. 98-76) changed the eligibility requirements for a child's annuity when the child is a full-time student to conform to social security benefit provisions. These changes are reflected in proposed subpart H. The Solvency Act, at section 413, also liberalized the eligibility conditions for a parent's annuity. This change is reflected in proposed subpart I.

The Railroad Retirement Act of 1974, prior to its amendment in 1988 by the Railroad Unemployment and Retirement Improvement Act of 1988, provided that no annuity was payable in any month in which an annuitant performed compensated service for his or her last employer prior to retirement, commonly referred to as the "last person service restriction." An exception to this restriction was made if the last employer was a governmental unit and the annuitant was a compensated elected public official of this unit. A similar rule for appointed public officials receiving nominal salaries was established by administrative ruling. The 1988 amendments eliminated the prohibition against payment of an annuity for any month in which the beneficiary performed compensated service for the last pre-retirement employer and substituted an earnings deduction to be applied to the tier II annuity component of a beneficiary engaged in last person service. The amendment also removed the language excepting elected public service from the employment restrictions. This change is reflected in subpart C of this proposed rule. Consistent with the amendment to the last person service provisions of the RRA, the Board proposes to no longer exempt public officers, elected or appointed, from the last person service work deductions. However, with respect to elected and appointed public officials this change will apply only to those individuals who file applications for annuities after the effective date of the final rule. Thus, elected and appointed public officials who will have applied for annuities prior to the effective date of the final rule will continue to be accorded the same treatmcnt with respect to their service for a governmental unit as prior to the effective date of the final rule.

The Board also proposes to reorder various sections of part 216 to facilitate the reader's use of that part. Provisions dealing with the definition of a current connection with the railroad industry are proposed to be placed in new Subpart B. All provisions dealing with work restrictions which impact upon eligibility for an annuity have been moved to proposed subpart C. Proposed subparts D-I contain the eligibility provisions for the various types of annuities payable under the Railroad Retirement Act. Proposed subpart J contains the restrictions on eligibility for more than one annuity. Finally, the following sections of the present part 216 which deal with the definitions of various family relationships are proposed to be moved to a new part 222: §§ 216.23, 216.24, 216.37, 216.48, and 216.63.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Part 216

Railroad employees, Railroad retirement.

For the reasons set forth in the preamble, part 216 of subchapter B, chapter II, title 20 of the Code of Federal Regulations is proposed to be revised as follows:

PART 216—ELIGIBILITY FOR AN ANNUITY

Subpart A—General

Sec.

Subpart B—Current Connection With The Railroad Industry

Subpart C—Railroad and Last Non-Railroad Employment

Authority: 45 U.S.C. 231f.

PART 216—ELIGIBILITY FOR AN ANNUITY

Subpart A—General

§ 216.1 Introduction.

This part explains when an individual is eligible for a monthly annuity under the Railroad Retirement Act. An individual eligible for an annuity as described in this part may become entitled to an annuity only in such amount as set forth in parts 225 through 229 of this chapter.

(a) *Regular annuity.* A regular monthly annuity is provided for—

(1) An employee who retires because of age or disability.

(2) An employee's spouse or divorced spouse; or

(3) The widow, widower, child, parent, remarried widow or widower; or surviving divorced spouse of an employee.

(b) *Supplemental annuity.* An employee who retires because of age or disability may also be entitled to a supplemental annuity.

§ 216.2 Definitions.

Except as otherwise expressly noted, as used in this part—

Age means an individual's age on the day preceding the anniversary date of his or birth.

Annuity means a payment due an entitled individual for a calendar month and made to him or her on the first day of the following month.

Apply means to sign a form or statement that the Railroad Retirement Board accepts as an application for benefits under the rules set out in part 217 of this chapter.

Attainment of age means that an individual attains a given age on the first moment of the day preceding the anniversary date of his birth corresponding to such numerical age.

Board means the Railroad Retirement Board.

Claimant means an individual who files or for whom an annuity application is filed.

Eligible means that an individual meets all the requirements for payment of an annuity but has not yet applied for one.

Employee means an individual who is or has been in the service of an employer as here defined.

Employer means a company, individual, or other entity determined to be a covered employer under the Railraod Retirement Act as provided by part 202 of this chapter.

Entitled means that an individual has applied for and has established his or her rights to benefits.

Railroad Retirement Act means the Railroad Retirement Act of 1974, as amended.

Re-entitled annuity means an annuity to which an individual becomes entitled after an earlier-awarded annuity has been terminated. A re-entitled annuity is usually awarded on the basis of different factors of elibility from the initial annuity, and may be awarded without the filing of another application.

Retirement age means, with respect to an employee who attains age 62 before January 1, 2000 (age 60 in the case of a widow(er), remarried widow(er) or surviving divorced spouse) age 65. For an employee who attains age 62 (or age 60 in the case of a widow(er), remarried widow(er) or surviving divorced spouse) after December 31, 1999, retirement age means the age provided in section 216(1) of the Social Security Act.

Social Security Act means the Social Security Act as amended.

Tier I benefit means the benefit component calculated using Social Security Act formulas and based upon earnings covered under both the Railroad Retirement Act and the Social Security Act.

Tier II benefit means the benefit component calculated under a formula found in the Railroad Retirement Act and based only upon earnings and service in the railroad industry.

Year of service means 12 calendar months, consecutive or otherwise, of service creditable to an employee as described in part 210 of this chapter.

§216.3 Other regulations released to this part.

This part is related to a number of other parts. Part 217 of this chapter describes how to apply for an annuity. Part 218 indicates when annuities begin and when they terminate. Part 219 sets out what evidence is necessary to prove eligibility. Where eligiblility for an annuity is based upon a family relationship to an employee (for example, a widow's annuity), the definition of such family relationship may be found in part 222 of this chapter. Part 225 of this chapter describes the computation of the primary insurance amount.

Subpart B—Current Connection With The Railroad Industry

§ 216.11 General.

A current connection with the railroad industry is required to qualify for certain types of railroad retirement benefits. The existence of a current connection is clear in most cases where entitlement or death immediately follows continuous

years of railroad employment. However, there are cases in which the employee did not work for a railroad employer for a period of time before entitlement or death. In these situations, special tests are applied to determine whether the employee can be considered to have a current connection with the railroad industry for the purpose of determining his or her eligibility for an annuity or other benefits.

§ 216.12 When current connection is required.

(a) A current connection is required to qualify an individual for the following types of railroad retirement benefits:

(1) An employee occupational disability annuity as described in subpart D of this part;

(2) A supplemental annuity as described in subpart E of this part;

(3) An employee vested dual benefit in certain cases;

(4) A survivor annuity as described in subparts G, H, and I of this part;

(5) A lump-sum death payment as described in part 234 of this chapter;

(b) A current connection which was established when an employee's annuity began is effective for—

(1) Any annuity under this part for which the employee later becomes eligible; and

(2) Any survivor annuity under this part or a lump-sum death payment under part 234 of this chapter.

§ 216.13 Regular current conneciton test.

An employee has a current connection with the railroad industry if he or she meets one of the following requirements:

(a) The employee has creditable railroad service in at least 12 of the 30 consecutive months immediately preceding the earlier of—

(1) The month his or her annuity begins; or

(2) The month he or she dies.

(b) The employee has creditable railroad service in at least 12 months in a period of 30 consecutive months and does not work in any regular non-railroad employment in the interval between the month the 30-month period ends and the earlier of—

(1) The month his or her annuity begins; or

(2) The month he or she dies.

§ 216.14 Regular non-railroad employment that will not break a current connection.

Regular non-railroad employment will not break an employee's current connection if it is performed during the 30-month period described in § 216.13(b), in or after the month the annuity begins, or in the month the employee dies.

§ 216.15 Special current connection test.

(a) *For survivor annuities.* An employee who does not have a current connection under the regular test has a current connection only to qualify an individual for a survivor annuity if—

(1) The employee would not be fully or currently insured under section 214 of the Social Security Act if his or her railroad compensation after 1936 were treated as social security earnings; or

(2) The employee has no quarters of coverage as defined in section 213 of the Social Security Act; or

(3) The employee received a pension or a retirement annuity that began before 1948 based on at least 114 months of service.

(b) *For survivor and supplemental annuities.* An employee who does not have a current connection under the regular test has a current connection in order to pay a supplemental or survivor annuity if he or she meets all of the following requirements:

(1) Has been credited with at least 25 years of railroad service;

(2) Stopped working in the railroad industry, "involuntarily and without fault" on or after October 1, 1975, or was on furlough, leave of absence or absent for injury on that date;

(3) Did not decline an offer of employment in the same "class or craft" as his or her most recent railroad service; and

(4) Was alive on October 1, 1981.

(c) *"Involuntarily and without fault" defined.* An employee is considered to have stopped railroad employment involuntarily and without fault if—

(1) The employee loses his or her job;

(2) The employee could not, through the exercise of seniority rights, remain in railroad service in the same class or craft as his or her most recent railroad service, regardless of the location where that service would be performed; and

(3) The employee did not lose his or her job because of poor job performance, misconduct, medical reasons or other action or inaction on the part of the employee.

(d) *Effect of separation allowance.* An employee who accepts a separation allowance and in so doing relinquishes his or her seniority rights to railroad employment is deemed to have voluntary terminated his or her railroad service. However, if the employee stopped railroad employment involuntarily and without fault, as defined in paragraph (c) of this section, receipt of a separation allowance will not affect a current connection under paragraph (b) of this section.

(e) *"Class or craft" defined.* The terms *class or craft*, as used in this section, have the same meaning as they do generally in the railroad industry.

(f) *For supplemental annuities only.* An additional special current connection test is required for an individual who was receiving a disability annuity which terminated due to the individual's recovery from disability. If the individual becomes entitled to a new annuity, a new current connection test based on the new annuity beginning date must be made. This test is made using the rules contained in §§ 216.13 and 216.17 of this chapter.

§ 216.16 What is regular non-railroad employment.

(a) Regular non-railroad employment is full or part-time employment for pay.

(b) Regular non-railroad employment does not include any of the following:

(1) Self-employment;

(2) Temporary work provided as relief by an agency of a Federal, State, or local government;

(3) Service inside or outside the United States for an employer under the Railroad Retirement Act, even if the employer does not conduct the main part of its business in the United States;

(4) Involuntary military service not creditable under the Railroad Retirement Act;

(5) Employment with the following agencies of the United States Government—

(i) Department of Transportation

(ii) Interstate Commerce Commission.

(iii) National Mediation Board.

(iv) Railroad Retirement Board.

(v) National Transportation Safety Board.

(6) Employment entered into after early retirement by an employee who is receiving an annuity under Conrail's voluntary annuity program. This program is provided under the Staggers Rail Act of 1980 (Pub. L. 96–448).

(7) Employment with the Alaska Railroad so long as it is an instrumentality of the State of Alaska.

§ 216.17 What amount of regular non-railroad employment will break a current connection.

The amount of regular non-railroad employment needed to break a current connection depends on when the applicable 30-month period ends (see § 216.13) of this part, as follows:

(a) If the 30-month period ends in the calendar year before or in the same calendar year as the annuity begins or the month the employee dies, the current connection is broken if the employee—

(1) Works in each month in the interval after the end of the 30-month

period and before the earlier of the month the annuity begins or the employee dies; or

(2) Works and earns at least $200 in wages in any three months within the interval described in paragraph (a)(1) of this section.

(b) If the 30-month period ends more than a year before the calendar year in which the annuity begins or the employee dies, the current connection is broken if the employee—

(1) Works in an two consecutive years wholly or partially within the interval after the end of the 30-month period and before the month the annuity begins or the employee dies, whichever is earlier; and

(2) Earns at least $1,000 in wages in any year wholly or partially within the interval described in paragraph (b)(1) of this section (but not counting earnings during the 30-month period and after the annuity beginning date), even if that year is not one of the two consecutive years described in paragraph (b)(1) of this section.

Subpart C—Railroad and Last Non-Railroad Employment

§ 216.21 General.

To be eligible for an employee, a spouse, or a divorced spouse annuity, the Railroad Retirement Act requires that an applicant must stop work for pay performed as an employee for a railroad employer. In addition, no employee, spouse or divorced spouse annuity may be paid for any month in which the employee, spouse or divorced spouse annuitant works for pay for any railroad employer after the date his or her annuity began. No annuity may be paid to a widow or widower, surviving divorced spouse, remarried widow or widower, child, or parent for any month such individual works for pay for a railroad employer.

§ 216.22 Work as an employee which affects payment.

(a) *Work for a railroad employer.* Work for pay as an employee of a railroad employer always prevents payment on an annuity.

(b) *Work for last non-railroad employer.* Work for pay in the service of the last non-railroad employer by whom an individual is employed will reduce the amount of the tier II benefit of the employee, spouse and supplemental annuity as provided in part 230 of this chapter. An individual's last non-railroad employer is:

(1) Any non-railroad employer from whom the individual last resigned (in point of time) in order to receive an annuity; and

(2) Any additional non-railroad employer from whom the individual resigned in order to have an annuity become payable. Employment which an individual stops within 6 months of the date on which the individual files for an annuity will be presumed in the absence of evidence to the contrary to be service from which the individual resigned in order to receive an annuity.

(c) *Corporate officers.* An officer of a corporation will be considered to be an employee of the corporation. A director of a corporation acting solely in his or her capacity as such director is not an employee of the corporation.

§ 216.23 Work which does not affect eligibility.

An individual may engage in any of the following without adversely affecting his or her annuity:

(a) *Work for a railway labor organization.* An individual may work for a local lodge or division of a railway labor organization if the pay is under $25 a month, unless the work performed is solely for the purpose of collecting insurance premiums.

(b) *Work without pay.* Work performed for any person or entity for which no pay is received, or where the pay merely constitutes reimbursement for out-of-pocket expenses, or where the amount received consists only of free will donations and there is no agreement that such donation shall constitute remuneration for services, does not affect entitlement to an annuity.

(c) *Self-employment.* Self-employment is work performed in an individual's own business, trade or profession as an independent contractor, rather than as an employee. An individual is not self-employed if the business is incorporated. The designation or description of the relationship between the individual and another person as anything other than that of an employer and employee is immaterial. If the Board determines that an employer-employee relationship exists, the fact that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like will be disregarded. An individual determined to be an employee of a railroad employer pursuant to part 203 of this subchapter is not self-employed. Whether an individual performing services is an employee depends upon the degree to which the recipient of services controls the individual's work. Control is determined in accordance with general legal principles delineating an employer-employee relationship. Among the factors considered are:

(1) *Instructions.* An individual required to comply with instructions about when, where, and how to work is ordinarily an employee. Instructions may be oral or in the form of manuals or written procedures which show how the desired result is to be accomplished. An individual who ordinarily works without receiving instructions because he or she is highly skilled or knowledgeable may nevertheless be an employee if the employer has a right to instruct the individual in performance of the work.

(2) *Training.* Training provided an individual by an employer indicates that the employer wants the work to be performed in a particular method or manner, especially if the training is given periodically or at frequent intervals. An individual may be trained by an experienced employee working with him or her, by correspondence, by required attendance at meetings, or by other methods.

(3) *Integration into the employer's business.* Integration of an individual's services into the business operations of an employer generally shows that the individual is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the individuals who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

(4) *Services rendered personally.* A requirement that an individual personally work for the employer indicates that the employer is interested in the methods as well as the results, and that the employer intends to control the result by controlling who does the work.

(5) *Hiring, supervising, payment of assistants.* An employer generally hires, supervises, and pays assistants. An individual who hires, supervises, and pays other workers at the direction of the employer may be an employee acting as a representative of the employer. However, if an individual hires, supervises, and pays his or her own assistants pursuant to a contract under which the individual agrees to provide materials and labor and under which the individual is responsible only for the attainment of a result, this factor indicates an independent contractor status.

(6) *Continuing work relationship.* A work relationship between an individual and an employer which continues over time indicates that the individual is an employee. A relationship may continue if the individual works at frequently recurring, though somewhat irregular

intervals, either on call of the employer or when work is available.

(7) *Set hours of work.* A requirement that an individual work for an employer during a specified period of the day, week, month or year, or for a specified number of hours daily indicates that the individual is an employee. An individual whose occupation renders fixed hours impractical may be an employee if required by the employer to work at certain times.

(8) *Full time required.* A requirement that an individual devote full time to the employer's business indicates that the indviidual is an employee. What full time means may vary with the intent of the parties, the nature of the occupation, and customs in the locality. Full-time work may be required indirectly even though not specified in writing or orally. An individual required to produce a minimum volume of business for an employer may be compelled to devote full time to producing the work. Prohibiting work for any other employer may require an individual to work full time to earn a living. However, part-time work performed on a regular basis, or on call of the employer, or when work is available, may also render an individual an employee.

(9) *Working on employer's premises.* Working on the employer's premises may indicate that an individual is an employee where by nature the work could be done elsewhere, because the employer's place of business is physically within the employer's direction and supervision. Desk space, telephone, and stenographic services provided by an employer place the worker within the employer's direction and supervision unless the worker has the option not to use these facilities. Work done off the employer's premises does not by itself indicate that the worker is not an employee because some occupations require that work be performed away from the premises of the employer. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

(10) *Order or sequence set.* Performing tasks in the order or sequence set by the employer indicates that the worker is an employee. Often, becaue of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.

(11) *Oral or written reports.* Regular oral or written reports submitted to the employer indicate that the worker is an employee, compelled to account to the employer for his or her actions.

(12) *Payment by hour, week, month.* Payment at a fixed rate per hour, week, or month indicates that an individual is an employee. Payment by commission with a guaranteed minimum salary, or by a drawing account at stated intervals with no requirement to repay amounts which exceed the individual's earnings, also indicates that an individual is an employee. Payment in a lump sum for a completed job indicates that an individual is self-employed. The lump sum may be computed by the number of hours required to do the job at a fixed hourly rate, or by weekly or monthly installments toward a lump sum agreed upon in advance as the total cost. Payment made on a straight commission basis generally indicates that the worker is an independent contractor.

(13) *Payment of business and/or traveling expenses.* Payment by the employer of expenses which an individual incurs in connection with the employer's business indicates that the individual is an employee.

(14) *Furnishing of tools and materials.* The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

(15) *Investment in facilities.* If the worker invests in facilities which are used by the worker in performing services and which are not typically maintained by employees, such as an office rented by the worker from a party unrelated to the worker or to the employer, this factor tends to indicate that the worker is an independent contractor. On the other hand, if all facilities necessary to the work which an individual performs are furnished without charge by the employer, this factor indicates the existence of an employer-employee relationship. Facilities include equipment or premises necessary for the work, other than items such as tools, instruments, and clothing which may be commonly provided by an employee in a particular trade.

(16) *Realization of profit or loss.* An individual not in a position to realize a profit or suffer a loss as a result of work performed for an employer is an employee. An individual has an opportunity for profit or loss if he or she:

(i) Hires, directs, and pays assistants;

(ii) Has his or her own office, equipment, materials, or other facilities for doing the work;

(iii) Has continuing and recurring liabilities or obligations, and success or failure depends on the relation of receipts to expenditures; or

(iv) Agrees to perform specific jobs for prices agreed upon in advance and pays expenses incurred in connection with the work.

(17) *Working for more than one firm at a time.* If a worker performs more than *de minimus* services for a number of unrelated persons or firms at the same time, this factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

(18) *Making service available to general public.* The fact that an individual makes his or her services available to the general public on a regular and consistent basis rather than to one employer indicates that the individual is self-employed rather than an employee of any one firm. An individual may make services available to the public by working from his or her own office with assistants, from his or her own home, by holding business licenses, by a listing in a business director, or by advertising.

(19) *Employer's right to discharge.* The right to discharge a worker is a factor which indicates that the worker is an employee and the person who possesses the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An employer's right to discharge exists even if it is restricted due to a collective bargaining agreement. An employer ordinarily cannot end a relationship without incurring liability with a self-employed individual who meets contract specifications.

(20) *Employee's right to terminate.* The fact that an individual has the right to end his or her relationship with an employer at any time without incurring liability for work to be performed indicates that the individual is an employee. A self-employed individual is legally obligated to satisfactorily complete a specific job.

§ 216.24 Relinquishment of rights to return to work.

(a) *What return to work rights must be given up.* Before an individual may receive an annuity based on age, he or she must give up any seniority or other rights to return to work for any railroad employer.

(b) *When right to return to work is ended.* An individual's right to return to

work for a railroad employer is ended whenever any of the following events occur:

(1) The employer reports to the Board that the individual no longer has the right; or

(2) The individual or an authorized agent of that individual gives the employer an oral or written notice of the individual's wish to give up that right and—

(i) The individual certifies to the Board that the right has been given up;

(ii) The Board notifies the employer of the individual's certification; and

(iii) The employer either confirms the individual's right has been given up or fails to reply within 10 days following the day the Board mailed the notice to the employer; or

(3) An event occurs which under the established rules or practices of the employer automatically ends that right; or

(4) The employer or the individual or both take an action which clearly and positively ends that right; or

(5) The individual never had that right and permanently stops working; or

(6) The Board gives up that right for the individual, having been authorized to do so by the individual; or

(7) The individual dies.

(8) The individual signs a statement that he or she gives up all rights to return to work in order to receive a separation allowance or severance pay.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0016.)

Subpart D—Employee Annuity

§ 216.30 General.

The Railroad Retirement Act provides annuities for employees who have reached a specified age and have been credited with a specified number of years of service. The Act also provides annuities for employees who become disabled. In addition, to be eligible for an annuity an employee must comply with the work restrictions outlined in subpart C of this part.

§ 216.31 Who is eligible for an age annuity.

The Railroad Retirement Act provides annuities based on the employee's age for employees who have been credited with at least 10 years of railroad service.

(a) *Annuities based on 10 years of service.* An employee with 10 years of railroad service but less than 30 years of service is eligible for an annuity if he or she:

(1) Has attained retirement age; or

(2) Has attained age 62 (the annuity cannot begin prior to the first full month during which the employee is age 62) but is less than retirement age. All components of the annuity are reduced for each month the employee is under retirement age when the annuity begins.

(b) *Annuities based on 30 years of service.* An employee who has been credited with 30 years of railroad service is eligible for an annuity at age 60 (the annuity cannot begin prior to the first full month the employee is age 60). The Tier I component of the annuity is reduced if the employee meets the following conditions:

(1) The employee annuity begins before the month in which the employee is age 62; and either

(2) He or she had not attained age 60, prior to July 1, 1984; or

(3) He or she had not completed 30 years of railroad service prior to July 1, 1984.

(c) *Change from employee disability to age annuity.* A disability annuity paid to an employee through the end of the month before the month in which the employee attains retirement age is converted to an age annuity beginning with the month in which he or she attains retirement age.

§ 216.32 Who is eligible for a disability annuity.

The Railroad Retirement Act provides two types of disability annuities for employees who have been credited with at least 10 years of railroad service. An employee may receive an annuity if his or her disability prevents work in his or her regular railroad occupation. An employee who cannot be considered for a disability based on ability to work in his or her regular railroad occupation may receive an annuity if his or her disability prevents work in any regular employment.

(a) *Disability for work in regular railroad occupation.* An employee disabled for work in his or her regular occupation, as defined in part 220 of this chapter, is eligible for a disability annuity if he or she:

(1) Has not attained retirement age; and

(2) Has a current connection with the railroad industry; and has either—

(3) Completed 20 years of service; or

(4) Completed 10 years of service and is at least 60 years old.

(b) *Disabled for work in any regular employment.* An employee disabled for work in any regular employment, as defined in part 220 of this chapter, is eligible for a disability annuity if he or she:

(1) Is under retirement age, and

(2) Has completed 10 years of service.

§ 216.33 What is required for payment of an age or disability annuity.

In addition to the eligibility requirements listed above, an employee may be required to meet other conditions before payment of his or her annuity may begin.

(a) To receive payment of an employee annuity based on age, an eligible employee must:

(1) Apply to be entitled to an annuity, and

(2) Give up the right to return to service with his or her last railroad employer.

(3) If a disability annuity is converted to an age annuity when the annuitant attains retirement age, the age annuity cannot be paid until the employee gives up the right to return to work as described in subpart C of this part. The employee may authorize the Board to relinquish any such right on his or her behalf at the time when he or she applies for the disability annuity.

(b) To receive payment of an employee annuity based on disability, an eligible employee must apply to be entitled to an annuity.

(c) When requested, the employee must submit evidence to support his or her application, such as proof of age or evidence of disability.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 3220–0002.)

Subpart E—Supplemental Annuity

§ 216.40 General.

An employee with a current connection with the railroad industry at the time of retirement may qualify for a supplemental annuity in addition to the regular employee annuity. Supplemental annuities are paid for a separate account funded by employer taxes in addition to those assessed for regular annuities. The Board reduces a supplemental annuity if the employee receives a private pension based on contributions from a railroad employer.

§ 216.41 Who is entitled to a supplemental annuity.

An employee is entitled to a supplemental annuity if he or she:

(a) Has been credited with railroad service in at least one month before October 1981; and

(b) Is entitled to the payment of an employee annuity awarded after June 30, 1966; and

(c) Has a current connection with the railroad industry when the employee annuity begins; and

(d) Has given up the right to return to work as shown in Subpart C of this part; and either

(e) Is age 65 or older and has completed 25 years of service, or

(f) Is age 60 or older and under age 65, has completed 30 years of service, and is awarded an annuity on or after July 1, 1974.

§ 216.42 How a private railroad pension affects a supplemental annuity.

(a) *What is a private railroad pension.* The Board determines whether a pension established by a railroad employer is a private pension that will cause a reduction in the employee's supplemental annuity. A private pension for purposes of this subpart is a plan that—

(1) Is a written plan or arrangement which is communicated to the employees to whom it applies; and

(2) Is established and maintained by an employer for a defined group of employees; and

(3) Provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement or disability. Such a plan is sometimes referred to as a defined benefit plan.

(b) *Defined contribution plan.* A plan under which the employer is obligated to make fixed contributions to the plan regardless of profits (sometimes known as a money purchase plan) is a private pension plan. A plan under which the employer's contributions are discretionary is not a private pension plan under this section.

(c) *Other than retirement benefits.* A plan which provides benefits not customarily considered retirement benefits (such as unemployment benfits, sickness or hospitalization benefits) is not a private pension plan under this section.

(d) *Effective date of private railroad pension for supplemental annuity purposes.* A private pension reduces a supplemental annuity payment effective on the first day of the month after the month the Board determines that it is a private pension as defined in paragraph (a) of this section.

(e) *Effect of private railroad pension.* A supplemental annuity is reduced by the amount of any private pension the employee is receiving which is attributable to an employer's contributions, less any amount by which the private pension is reduced because of the supplemental annuity. The supplemental annuity is not reduced for the amount of a private pension attributable to the employee's contributions. The Board will determine the amount of a private pension for any month which is attributable to the employee's contributions.

§ 216.43 Effect of a supplemental annuity on other benefits.

(a) *Employee annuity.* A supplemental annuity that begins after December 31, 1974, does not affect the payment of a regular employee annuity. A supplemental annuity beginning prior to 1975 causes a reduction in the employee annuity as provided by section 3(j) of the Railroad Retirement Act of 1937.

(b) *Spouse or survivor annuity.* The payment of supplemental annuity does not affect the amount of a spouse or survivor annuity.

(c) *Residual lump-sum.* The amount of a supplemental annuity is not deducted from the gross residual lump-sum benefit. See part 234 of this chapter for an explanation of the residual lump-sum benefit.

Subpart F—Spouse and Divorced Spouse Annuities

§ 216.50 General.

The Railroad Retirement Act provides annuities for the spouse, and divorced spouse, of an employee who is entitled to an employee annuity. A spouse may receive an annuity based on age, or on having a child of the employee in his or her care. A divorced spouse may only receive an annuity based on age. No spouse or divorced spouse annuity may be paid based upon disability.

§ 216.51 Who is eligible for a spouse annuity.

(a) To be eligible for an annuity, a spouse must—

(1) Be the husband or wife, as defined in part 222 of this chapter, of an employee who is entitled to an annuity described under subpart D of this part; and

(2) Stop working for any railroad employer.

(b) Where the employee's annuity began before January 1, 1975, the employee has completed less than 30 years of railroad service, and is age 65 or older, the spouse must be—

(1) Age 65 or older; or

(2) Less than age 65 and have in his or her care a disabled child or minor child (a child under 18 years old if the spouse claimant is a wife, or under 16 years old if the spouse claimant is a husband) of the employee; or

(3) Age 62 or older but under age 65. In such case, all annuity components are reduced for each month the spouse is under age 65 at the time the annuity begins.

(c) Where the employee's annuity begins after December 31, 1974, the employee has completed 10 years but less than 30 years of railroad service, and has attained age 62, the spouse must be—

(1) Retirement age or older; or

(2) Less than retirement age and have in his or her care a disabled child or a minor child (a child under 18 years old if the spouse claimant is a wife or under 16 years old if the spouse claimant is a husband) of the employee; or

(3) Age 62 or older but under retirement age. In such case, all annuity components are reduced for each month the spouse is under retirement age at the time the annuity begins.

(d) Where the employee's annuity began after June 30, 1974, the employee has completed 30 years of railroad service, and is age 60 or older, the spouse must be—

(1) Age 60 or older; or

(2) Less than age 60 and have in his or her care a disabled child or a minor child (a child under 18 years old if the spouse claimant is a wife, or under 16 years old if the spouse claimant is a husband) of the employee; or

(3) Age 60 but less than retirement age. In such case, the Tier I component is reduced if the following conditions are met:

(i) The employee was under age 62 at the time his or her annuity began; and

(ii) The employee annuity began after June 30, 1984; and

(iii) The employee was under age 60 on June 30, 1984 or completed 30 years of railroad service after June 30, 1984; and

(iv) The spouse annuity begins after June 30, 1984.

§ 216.52 Who is eligible for an annuity as a divorced spouse.

To be eligible for a divorced spouse annuity, the employee annuitant must be at least age 62 and the divorced spouse (see § 222.22 of this chapter) must—

(a) Be the divorced wife or husband of an employee; and

(b) Stop work for a railroad employer; and

(c) Not be entitled to an old-age or disability benefit under the Social Security Act based on a primary insurance amount that is equal to or greater than one-half of the employee's tier I primary insurance amount; and either

(d) Have attained retirement age; or

(e) Have attained age 62 but be under retirement age. The annuity is reduced for each month the spouse is under retirement age at the time the annuity begins.

§ 216.53 What is required for payment.

An eligible spouse or divorced spouse must—

(a) Apply to be entitled to an annuity; and

(b) Give up the right to return to work for a railroad employer.

(Approved by the Office of Management and Budget under control number 3220–0016 and 3220–0042.)

§ 216.54 Who is an employee's wife or husband.

An employee's wife or husband is an individual who—

(a) Is married to the employee; and

(b) Has been married to the employee for at least one year immediately before the date the spouse applied for annuity; or

(c) Is the natural parent of the employee's child; or

(d) Was entitled to an annuity as a widow(er), a parent, or a disabled child under this part in the month before he or she married the employee; or

(e) Could have been entitled to a benefit listed in paragraph (d) of this section, if the spouse had applied and been old enough in the month before he or she married the employee.

Subpart G—Widow(er), Surviving Divorced Spouse, and Remarried Widow(er) Annuities

§ 216.60 General.

The Railroad Retirement Act provides annuities for the widow(er), surviving divorced spouse, or remarried widow(er) of an employee. The deceased employee must have completed 10 years of railroad service and have had a current connection with the railroad industry at the time of his or her death. A widow(er), surviving divorced spouse, or remarried widow(er) may receive an annuity based on age, on disability, or on having a child of the employee in his or her care.

§ 216.61 Who is eligible for an annuity as a widow(er).

A widow(er) of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry at death is eligible for an annuity if he or she—

(a) Has not remarried; and either

(b) Has attained retirement age; or

(c) Is at least 50 but less than 60 years of age and became disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity); or

(d) Is less than retirement age but has in his or her care a child who either is under age 18 (16 with respect to the tier I component) or is disabled and who is entitled to an annuity under subpart H of this part; or

(e) Is at least 60 years of age but has not attained retirement age. (In this case, all components of the annuity are reduced for each month the widow(er) is age 62 or over but under retirement age when the annuity begins. For each month the widow(er) is at least age 60 but under age 62, all components of the annuity are reduced as if the widow(er) were age (62).

§ 216.62 Who is eligible for an annuity as a surviving divorced spouse.

(a) A surviving divorced spouse of an employee who completed 10 years of railroad service and had a current connection with the railroad industry at death, is eligible for an annuity if he or she:

(1) Is unmarried; and

(2) Is not entitled to an old-age benefit under the Social Security Act that is equal to or higher than the surviving divorced spouse's annuity before any reduction for age; and either

(3) Has attained retirement age; or

(4) Is at least 50 years of age but less than retirement age and is disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity.); or

(5) Is less than retirement age but has in his or her care a child who either is under age 16 or is disabled and who entitled to an annuity under subpart H of this part; or

(6) Is at least 60 years of age but has not attained reitrement age. In this case, the annuity is reduced for each month the surviving spouse is under retirement age when the annuity begins.

(b) A disabled surviving spouse's annuity is converted to an annutiy based on age beginning the month he or she becomes 60 years old. The annuity rate does not change.

(c) If a surviving divorced spouse marries after attaining age 60 (or age 50 if he or she is a disabled surviving divorced spouse), such marriage shall be deemed not to have occurred.

§ 216.63 Who is eligible for an annuity as a remarried widow(er).

(a) A widow(er) of an employee who completed 10 years of railroad service and had a current connection with the railroad industry at death is eligible for an annuity as a remarried widow(er) if he or she:

(1) Remarried either—

(i) After having attained age 60 (after age 50 if disabled); or

(ii) Before age 60 but the marriage terminated; and

(2) Is not entitled to an old-age benefit under the Social Security Act that is equal to or higher than the full amount of the remarried widow(er)'s annuity before any reduciton for age; and

(3) Has attained retirement age; or

(4) Is at least 50 but less than 60 years of age and is disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity); or

(5) Has not attained retirement age but has in his or her care a child who either is under age 16 or is disabled, and who is entitled to an annuity under subpart H of this part; or

(6) Is at least age 60 but has not attained retirement age. (In this case, the annuity is reduced for each month the remarried widow(er) is under retirement age when the annuity begins).

(b) An individual entitled to a widow(er)'s annuity may be entitled to an annuity as a remarried widow(er) if he or she;

(1) Remarries after having attained age 60 (after age 50 if he or she has been determined to be disabled prior to his or her remarriage) and is not a surviving divorced spouse; or

(2) Is entitled to an annuity based uon having a child of the employee in his or her care and marries an individual entitled to a retirement, disability, widow(er)'s mother's, father's, parent's, or disabled child's benefit under the Railroad Retirement or Social Security Act.

§ 216.64 What is required for payment.

An eligible widow(er), surviving divorced spouse, or remarried widow(er) must—

(a) Apply to be entitled to an annuity; and

(b) Submit evidence requested by the Board to support his or her application.

(Approved by the Office of Management and Budget under control number 3220–0030.)

§ 216.65 Who is an employee's widow(er).

An individual who was married to the employee at the employee's death is the deceased employee's widow(er) if he or she:

(a) Was married to the employee for at least nine months before the day the employee died; or

(b) Is the natural parent of the employee's child; or

(c) Was married to the employee when either the employee or the widow(er) adopted the other's child, or they both legally adopted a child who was then under 18 years old; or

(d) Was married to the employee less than nine months before the employee died but, at the time of marriage, the

employee was reasonably expected to live for nine months; and

(1) The employee's death was accidental; or

(2) The employee died in the line of duty while he or she was serving active duty as a member of armed forces of the United States; or

(3) The surviving spouse was previously married to the employee for at least nine months; or

(e) Was entitled in the month before the month of marriage to either—

(1) A benefit under section 202 of the Social Security Act as a widow, widower, spouse (divorced spouse, surviving divorced spouse), father, mother, parent, or disabled child; or

(2) An annuity under the Railroad Retirement Act as a widow, widower, divorced spouse, or surviving divorced spouse, parent or disabled child; or

(f) Could have been entitled to a benefit listed in paragraph (e) above, if the widow(er) had applied and been old enough to qualify therefor in the month before the month of marraige.

§ 216.66 Who is an employee's surviving divorced spouse.

An individual who was married to the employee is the deceased employee's surviving divorced spouse if he or she:

(a) Was married to the employee for a period of at least 10 years immediately before the date the divorce became final, and applies for an annuity based on age or disability; or

(b) Applies for an annuity based on having a "child in care" and either—

(1) Is the natural parent of the employee's child; or

(2) Was married to the employee at the time the employee or the surviving divorced spouse adopted the other's child who was then under 18 years old; or

(3) Was married to the employee at the time they adopted a child who was then under 18 years old.

§ 216.67 "Child in care".

(a) *Railroad Retirement Act.* Part 222 of this chapter sets forth what is required to establish that a child is in an individual's care for purposes of the Railroad Retirement Act. This definition is used to establish eligibility for the tier II component of a female spouse or widow(er) annuity under that Act. Under this definition a child must be under age 18 or under a disability before any benefit is payable based upon having the child in care.

(b) *Social Security Act.* In order to establish eligibility for the tier I component of a spouse or widow(er) annuity, and eligibility for a surviving divorced spouse annuity based upon having a child of the employee in care, the definition of "child in care" found in the Social Security Act is used. Under this definition, a child must be under age 16 or under a disability.

§ 216.68 Disability period for widow(er), surviving divorced spouse, or remarried widow(er).

A widow(er), surviving divorced spouse, or married widow(er) who has a diability as defined in part 220 of this chapter is eligible for an annuity only if the disability began before the end of a period which—

(a) Begins in the later of—

(1) The month in which the employee died; or

(2) The last month for which the widow(er) or surviving divorced spouse was entitled to an annuity for having the employee's child in care; or

(3) The last month for which the widow(er) or surviving divorced spouse was entitled to a previous annuity based on disability; and

(b) Ends with the earlier of—

(1) The month before the month in which the widow(er) or surviving divorced spouse or remarried widow(er) become 60 years old; or

(2) The last day of the last month of a 7-year period (84 consecutive months) following the month in which the period began.

Subpart H—Child's Annuity

§ 216.70 General.

The Railroad Retirement Act provides an annuity for the child of a deceased employee but for the child of a living employee. The Act does provide that the child of a living employee can establish another individual's eligibility for a spouse annuity or cause an increase in the annuities of an employee and spouse. The eligibility requirements described in this subpart also apply for the following purposes, except as otherwise indicated in this part:

(a) To establish annuity eligibility for a spouse under subpart F of this part if he or she has the employee's eligible child in care;

(b) To establish annuity eligibility for a widow(er), or surviving divorced spouse or remarried widow(er) under Subpart G of this part if he or she has the employee's child in care; or

(c) To provide an increase in the employee's annuity under the Social Security Overall Minimum Guaranty (see part 229) by including the eligible child.

§ 216.71 Who is eligible for a child's annuity.

An individual is eligible for a child's annuity if the individual—

(a) Is a child of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry when he or she died;

(b) Is not married at the time the application is filed;

(c) Is dependent upon the employee as defined in Part 222 of this chapter; and

(d) Meets one of the following at the time the application is filed—

(1) Is under age 18;

(2) Is age 18 or older and either—

(i) Is disabled as defined in part 220 of this chapter before attaining age 22 (the disability must continue through the time of application for benefits); or

(ii) Is under age 19 and is a full-time student as defined in § 216.74 of this part; or

(iii) Becomes age 19 in a month in which he or she is a full-time student and has not completed the requirement for, or received a diploma or certificate from, a secondary school.

§ 216.72 What is required for payment of a child's annuity.

An eligible child of a deceased employee is entitled to an annuity upon applying therefor and submitting any evidence requested by the Board.

(Approved by the Office of Management and Budget under control number 3220–0030.

§ 216.73 Who may be re-entitled to a child's annuity.

If an individual's entitlement to a child's annuity has ended, the individual may be re-entitled if he or she has not married and he or she applies to be re-entitled. The re-entitlement may begin with—

(a) The first month in which the individual is a full-time student if he or she is under age 19, or is age 19 and has not completed requirements for, or received a diploma or certificate from, a secondary school; or

(b) The first month the individual is disabled, if the disability began before he or she attained age 22 and continues through the time of application for benefits; or

(c) The first month in which the individual is under a disability that began before the last day of a 7-year period (84 consecutive month) following the month in which the previous child's annuity ended, or the individual was no longer included as a disabled child in a railroad retirement annuity paid under the Social Security Overall Minimum Annuity (see part 229).

§ 216.74 When a child is a full-time student.

(a) *Full-time student.* A child is considered a full-time student when that

individual is in full-time attendance at an elementary or secondary school. An individual is not a full-time student if while attending an elementary or secondary school he or she is paid compensation by an employer who has requested or required that the individual attend the school. An individual is not a full-time student while he or she is confined in a penal institution or correctional facility because he or she committed a felony after October 19, 1980. A student who reaches age 19 but has not completed the requirements for a secondary school diploma or certificate and who is in full-time attendance at an elementary or secondary school will continue to be eligible for benefits until the first day of the first month following the end of the quarter or semester in which he or she is then enrolled, or if the school is not operated on a quarter or semester system, the earlier of—

(1) The first day of the month following completion of the course(s) in which he or she was enrolled when age 19 was reached; or

(2) The first day of the third month following the month in which he or she reached age 19.

(b) *Full-time attendance.* Full-time school attendance means that a student is enrolled in a non-correspondence course which is considered full-time for day students under the practices and standards of the elementary or secondary school. The course must last at least 13 weeks and the student's scheduled rate of attendance must be at least 20 hours a week. A student whose full-time attendance either begins or ends in a given month is in full-time attendance for that entire month. A student is in full-time attendance in the month in which he or she graduates, but has no classes, if classes end in the month before graduation.

(c) *Elementary or secondary school.* An elementary or secondary school is a school which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which it is located.

§ 216.75 When a child is a full-time student during a period of non-attendance.

A student who has been in full-time attendance at an elementary or secondary school is considered a full-time student during a period of non-attendance (include part-time attendance) if—

(a) The period of non-attendance is four consecutive months or less; and

(b) The student shows to the satisfaction of the Board that he or she intends to return, or the student does return, to full-time attendance at the end of the period; and

(c) The student has not been expelled or suspended from the school.

Subpart I—Parent's Annuity

§ 216.80 General.

The Railroad Retirement Act provides an annuity for the surviving parent of a deceased employee. The deceased employee must have completed 10 years of railroad service and have had a current connection with the railroad industry at the time of his or her death. A parent may only receive an annuity based on age.

§ 216.81 Who is eligible for a parent's annuity.

(a) Where the employee is not survived by a widow(er), or child who is or ever could be entitled to an annuity as described by Subparts G or H of this part, a parent of the deceased employee is eligible for both the tier I and tier II components of an annuity if he or she:

(1) Is age 60 or older; and

(2) Has not married since the employee died; and

(3) Received one-half of his or her support (as defined in Part 222 of this chapter) from the employee at the time the employee died.

(4) Files proof of support as provided for in paragraph (b)(4) and (b)(5) of this section.

(b) Where the employee is survived by a widow(er), or child who is or ever could be entitled to an annuity as described by subparts G or H of this part, a parent of the deceased employee is eligible for an annuity consisting of the tier I component alone if he or she:

(1) Is age 60 or older; and

(2) Has not married since the employee died; and

(3) Is not in receipt of an old age benefit under the Social Security Act equal to or exceeding the amount of the parent's Tier I annuity amount before it is reduced for the family maximum but after the sole survivor minimum is considered; and

(4) Received at least one-half of his or her support (as defined in part 222 of this chapter) from the employee either—

(i) When the employee died, or

(ii) At the beginning of the period of disability if the employee had a period of disability (as explained in part 220 of this chapter) which did not end before death; and

(5) Files proof of support with the Board within two years after either—

(i) The month in which the employee filed an application for a period of disability if support is to be established as of the beginning of the period of disability; or

(ii) The date of the employee's death if support is to be established at that point.

(6) The Board may accept proof of support filed after the two-year period for reasons which constitute good cause to do so as that term is defined in part 219 of this chapter.

§ 216.82 What is required for payment.

An eligible parent must file an application and submit the evidence requested by the Board to be entitled to an annuity.

(Approved by the Office of Management and Budget under control number 3220-0030.)

Subpart J—Eligibility for More Than One Annuity

§ 216.90 General.

An individual may meet the eligibility provisions for more than one annuity described in this part. The Railroad Retirement Act generally requires that the total amount of annuities otherwise independently payable to one individual must be reduced if that individual is entitled to multiple annuities. Entitlement as a survivor includes entitlement as a widow(er), surviving divorced spouse, remarried widow(er), child, or parent.

§ 216.91 Entitlement as an employee and spouse, divorced spouse, or survivor.

(a) *General.* If an individual is entitled to an annuity as a spouse, divorced spouse or survivor, and is also entitled to an employee annuity, then the spouse, divorced spouse or survivor annuity must be reduced by the amount of the employee annuity. However, this reduction does not apply (except as provided in paragraph (b) of this section) if the spouse, divorced spouse or survivor or the individual upon whose earnings record the spouse, divorced spouse or survivor annuity is based worked for a railroad employer or as an employee representative before January 1, 1975.

(b) *Tier I reduction.* If an individual is entitled to an annuity as a spouse, divorced spouse or survivor, and is also entitled to an employee annuity, then the tier I component of the spouse, divorced spouse or survivor annuity must be reduced by the amount of the tier I component of the employee annuity. Where the spouse or survivor is entitled to a tier II component, then a portion of this reduction may be restored in the computation of this component.

§ 216.92 Entitlement as a spouse or divorced spouse and as a survivor.

If an individual is entitled to both a spouse or divorced spouse and survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

§ 216.93 Entitlement to more than one survivor annuity.

If an individual is entitled to more than one survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

§ 216.94 Entitlement to more than one divorced spouse annuity.

If an individual is entitled to more than one annuity as a divorced spouse, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

Dated: February 28, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-5760 Filed 3-11-91; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-116-90]

RIN 1545-AP30

Allocation of Charitable Contributions

AGENCY: Internal Revenue Service. Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the allocation and apportionment of charitable deductions. These regulations would provide guidance needed to comply with the provisions of subchapter N of the Internal Revenue Code and would affect taxpayers with foreign source income.

DATES: Comments and requests for a public hearing must be received by May 13, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 2604, Ben Franklin Station Attention: CC:CORP:T:R (INTL-116-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-116-90) (202-566-6795, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington DC 20503, with copies to the Internal Revenue Service, Attention IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.861-8(e)(iv). This information is required by the Internal Revenue Service to ensure the proper application of § 1.861-8(e)(iv). This information will be used to verify the United States source allocation of certain charitable contributions. The likely recordkeepers are businesses or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 500 hours.

Estimated annual burden per recordkeeper: 1 hour.

Estimated number of recordkeepers: 500.

Explanation of Provisions

Section 1.861-8(e) of the regulations is proposed to be amended. This amendment would add new paragraph (e)(12) to § 1.861-8 to provide new guidance concerning the allocation and apportionment of deductions for charitable contributions.

This new paragraph provides that a taxpayer shall allocate a deduction for charitable contributions solely to United States source gross income or solely to foreign source gross income in certain circumstances. The taxpayer shall allocate a deduction for a charitable contribution to United States source gross income if (1) the taxpayer, at the time of the contribution, both designates the contribution for use solely in the United States and reasonably believes that the contribution will be so used, and if (2) the contribution is not allocable to foreign source gross income under the following rule. The taxpayer shall allocate a deduction for a charitable contribution to foreign source gross income if the taxpayer, at the time of the contribution, knows or has reason to know that (1) the contribution will be used solely outside the United States, or that (2) the contribution may necessarily be used only outside the United States. A deduction for a charitable contribution that is not allocable to United States or foreign source gross income under the foregoing rules is ratably apportioned as provided in § 1.861-8(c)(3). A coordination rule is added to clarify that, in applying these rules to an affiliated group as defined in § 1.861-14T(d), the allocation and apportionment of deductions for charitable contributions will be performed by treating the entire group as a single taxpayer. An example illustrating new § 1.861-8(e)(12) is added at § 1.861-8(g) *Example* (34).

The Service particularly seeks comments on the effects of the proposed rules on United States charities with significant international activities.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Chief Counsel for Advocacy for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and

place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.861–1 through 1.997–1

Aliens, Corporate deductions, Disc, Exports, Foreign investments in the U.S., Foreign tax credit, FSC, Income taxes, Source of income, U.S. investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.861–8 is proposed to be amended as follows:

1. Paragraph (e)(9)(iv) is removed, paragraph (e)(9)(v) is redesignated as paragraph (e)(9)(iv), and the word "and" is added at the end of paragraph (e)(9)(iii).

2. Paragraph (e)(12) is added to read as set forth below.

3. Paragraph (g) Example (18) is amended by removing the portion of the table in paragraph (i) immediately following "Total gross income...40,000,000" and adding a new sentence following the table as set forth below, and by removing paragraph (iv).

4. Paragraph (g) is amended by adding Example 34 to read as set forth below.

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) Allocation and apportionment of certain deductions.

* * * * *

(12) Deductions for certain charitable contributions—(i) *Allocation to United States source gross income.* A taxpayer shall allocate a deduction for a charitable contribution solely to United States source gross income if—

(A) The taxpayer, at the time of the contribution, both designates the charitable contribution for use solely in the United States and reasonably believes that the contribution will be so used; and

(B) The contribution is not described in paragraph (e)(12)(ii) of this section.

If a deduction for a charitable contribution is allocable under this paragraph (e)(12)(i) to United States source gross income, in determining the combined taxable income of a DISC or FSC, as the case may be, and its related supplier, no portion of the deduction shall be allocable to the combined gross income of the DISC or FSC and its related supplier.

(ii) *Allocation to foreign source gross income.* The taxpayer shall allocate a deduction for a charitable contribution solely to foreign source gross income if the taxpayer, at the time of the contribution, knows or has reason to know that—

(A) The charitable contribution will be used solely outside the United States; or

(B) The charitable contribution may necessarily be used only outside the United States.

If a deduction for a charitable contribution is allocable under this paragraph (e)(12)(ii) to foreign source gross income, in determining the combined taxable income of a DISC or FSC, as the case may be, and its related supplier, the deduction shall be allocable solely to the combined gross income of the DISC or FSC and its related supplier.

(iii) *Ratable apportionment.* A deduction for a charitable contribution that is not required to be allocated to United States or foreign source gross income under paragraph (e)(12)(i) or (ii) of this section is ratably apportioned by the taxpayer on the basis of gross income as provided in § 1.861–8(c)(3).

(iv) *Special rule for private foundations.* If a taxpayer who is a substantial contributor (as defined in section 507 (d)(2)) with respect to a private foundation (as defined in section 509 (a)) claims a deduction for the year of more than $25,000 in charitable contributions to that private foundation, in order for that deduction in its entirety to be allocated solely to United States source gross income under paragraph (e)(12)(i) of this section, the following additional conditions must be met.

(A) The taxpayer must make the contributions on the condition that the foundation set up a restricted account solely for these contributions; and

(B) The taxpayer must take actions to ensure, and maintain records to show, in conformity with the principles of the expenditure responsibility requirements of § 53.4945–5 of this chapter (applied as if the taxpayer were itself a private foundation making grants to another private foundation), that the funds in the restricted account were or will be used solely in the United States. The taxpayer need not report annually to the Service the information described in § 53.4945–5(d) (1) and (2) of this chapter but must present that information upon request by the Service.

(v) *Coordination with § 1.861–14T.* A deduction for a charitable contribution by a member of an affiliated group shall be allocated and apportioned under the rules of this section and § 1.861–14T. In this regard, § 1.861–14T (c) (1), but not § 1.861–14T (c) (2), applies to the allocation of such a deduction.

* * * * *

(g) * * *

Example (18). * * *

(i) * * *

Among other deductions, X incurs $1,600,000 in expenses of its supervision department.	
* * *	

* * * * *

Example 34—Deduction for charitable contributions—(i) *Facts.* X, a domestic corporation and not a member of an affiliated group under § 1.861–14T (d), does business in the United States and, through a branch, in foreign country Y. X's gross income for the taxable year is $3,000,000, consisting of $2,000,000 United States source gross income and $1,000,000 foreign source gross income. During its taxable year, X made charitable contributions of $12,000 each to the following charities subject to the following conditions or circumstances (if any):

Charity A, an organization benefitting homeless persons in the United States but with some similar charitable activities carried on in Canada. X designates the contribution for use solely within the United States and Charity A represents generally that contributions will be used in accordance with donor designations.

Charity B, an organization promoting worldwide wildlife conservation, with the stipulation by X that its contribution be used only for activities outside the United States.

Charity C, an organization operating a regional relief organization. The form of the contribution is in Y currency, a blocked currency which X values at U.S. $12,000.

Charity D, an organization benefitting persons afflicted with a certain disease.

(ii) *Allocation and apportionment.* The contribution to Charity A shall be allocated solely to United States source gross income pursuant to § 1.861–8(e)(12)(i) because X designates the contribution for use solely within the United States, and, based on Charity A's representation generally that designations will be honored, reasonably believes that the contribution will be so used. The contribution to Charity B shall be allocated solely to foreign source gross income under § 1.861–8(e)(12)(ii) because X, based on its stipulation, has reason to know that its contribution will be used by Charity B only for B's activities outside the United

States. The contribution to Charity C shall be allocated solely to foreign source gross income under § 1.861–8(e)(12)(ii) because X knows (or has reason to know) that the contribution may necessarily be used only in Y because its contribution was in blocked Y currency. The contribution to Charity D is apportioned ratably on the basis of gross income pursuant to § 1.861–8(e)(12)(iii), as follows, because the conditions of paragraph § 1.861–8(e)(12)(i) or (ii) do not apply.

Apportionment of contribution to Charity D to foreign source gross income:

$12,000 X $1,000,000 / $3,000,000 ..... $4,000

Apportionment of contribution to Charity D to United States source gross income:

$12,000 X $2,000,000 / $3,000,000 8,000

Total apportioned charitable contribution 12,000

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.
Approved: February 20, 1991.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 91–5586 Filed 3–11–91; 8:45 am]
BILLING CODE 4830–01–M

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26 CFR Part I

[INTL-0952-86]

RIN 1545–AM20

Allocation and Apportionment of Interest Expense

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the allocation and apportionment of interest expense necessary for purposes of computing taxable income from sources within and without the United States. The proposed regulations would require that, in certain circumstances, third party interest expense of an affiliated group of corporations be allocated directly to interest income received from related controlled foreign corporations. When finalized, the proposed regulations would replace existing temporary regulations.

DATES: Comments and requests for a hearing must be received by May 13, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0952–86), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Judith Cavell of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC: CORP:T:R(INTL–0952–86) (202–566–6442, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the temporary Income Tax Regulations (26 CFR part 1) under section 864(e) of the Internal Revenue Code of 1986. Proposed regulations which would have implemented section 864(e) were published in the **Federal Register** at 52 FR 34580 on September 11, 1987. Those proposed regulations were withdrawn and replaced by temporary regulations and a notice of proposed rulemaking by cross-reference to temporary regulations published on September 14, 1988, in the **Federal Register** at 53 FR 35525 and 53 FR 35467, respectively.

Explanation of Provisions

On September 14, 1988, the **Federal Register** published temporary regulations §§ 1.861–8T through 1.861–14T relating to the allocation and apportionment of interest and certain other expenses. A notice of proposed rulemaking was published on the same day by cross-reference to those temporary regulations.

Section 1.861–10T(e) requires that, in certain circumstances, third party interest expense of an affiliated group of corporations be allocated directly to interest income received from related controlled foreign corporations. Numerous written comments on this section have been received and considered. It is now proposed that § 1.861–10T(e) be replaced with the regulation provided herein. The remainder of this preamble discusses § 1.861–10T(e) and its origin, the most significant public comments received thereon, and the proposed regulation.

Section 864(e)

Section 864(e)(1) provides that the taxable income of each member of an affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single taxpayer. Pursuant to section 864(e)(5), however, the term "affiliated group" does not include related controlled foreign corporations (herein "related CFCs") for this purpose. Section 864(e) reflects a legislative intent that indebtedness incurred by affiliated United States corporations be considered fungible for purposes of interest allocation, but that indebtedness of affiliated United States corporations should not be considered fungible with that of related CFCs. In effect, section 864(e) requires that interest expense incurred by related CFCs be traced directly to the income of these CFCs.

The Origin of § 1.861–10(e)

After the elimination of the separate company allocation method of prior law by the enactment of section 864(e), many multinational groups adopted a financing technique consisting of borrowing by United States group members coupled with the on-lending of such amounts to related CFCs. Such on-lending often replaced existing indebtedness owed (or that would otherwise have been incurred) by related CFCs to unrelated third parties; in effect, third party indebtedness of related CFCs was routed through the United States affiliated group.

This technique provided two significant tax benefits. The primary benefit was an increase in the foreign source income of the United States affiliated group by virtue of the creation of new foreign source interest income. The creation of offsetting interest deductions ensured, however, that overall taxable income of the United States affiliated group was not increased. Although a portion of the group's new interest deductions were apportioned to (and thus reduced) foreign source income, a group's holdings of domestic assets ensured that the amount of new interest expense apportioned to foreign source income did not exceed the amount of new foreign source interest income received from the related CFCs.

A second, related benefit was the effective apportionment of a portion of the CFCs' interest expense to United States source income of the United States affiliated group. As noted above, a portion of the new interest expense incurred by the affiliated group was apportioned to United States source income.

The Treasury Department believes that, to allow taxpayers to manipulate borrowing by related CFCs in order to achieve both an increase in the foreign source income, and a reduction of the United States source income, of a United States affiliated group would not carry out the purposes of section 864(e) as described above. Section 864(e)(7)

requires the Secretary to prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 864(e). The Report of the Conference Committee on the 1986 Act adds that "the conferees intend that the Secretary use the regulatory authority provided in the agreement to allocate interest expense directly to interest or other passive income where such a direct allocation is necessary to prevent taxpayers from defeating the purposes of this provision." Accordingly, the Treasury Department believes that it is necessary, in order to carry out the purposes of section 864(e), to require that interest expense of a United States affiliated group that is incurred to finance on-lending to related CFCs of the type described above be allocated directly to interest income received with respect to such on-lending.

Temporary Regulation § 1.861–10T(e)

As originally proposed in August, 1987, § 1.861–10(e) would have required that third party interest expense of an affiliated group be allocated directly to interest income received from related CFCs, in an amount sufficient to offset the entire amount of such interest income. In effect, the original proposal treated all lending by a United States affiliated group to related CFCs as tax-motivated.

Before reissuance in temporary form in September of 1988, proposed § 1.861–10(e) was revised substantially to provide a more precise method for the identification of tax-motivated borrowing and on-lending. Section 1.861–10T(e) treats lending by a United States affiliated group to its related CFCs as tax-motivated if the related CFC group owes a disproportionately small amount of indebtedness to unrelated parties. Under the temporary regulation, a related CFC group is considered to have "excess related person indebtedness" if the aggregate debt-to-asset ratio of all related CFCs (taking into consideration only indebtedness owed to unrelated parties) is less than 80 percent of the debt-to-asset ratio of the United States affiliated group. The amount of such "excess related person indebtedness" is the amount of related person indebtedness which, if borrowed instead from unrelated parties, would have raised the debt-to-asset ratio of the related CFC group to 80 percent of the debt-to-asset ratio of the United States group. If the related CFC group has insufficient related person indebtedness to attain the required debt-to-asset ratio, certain related CFC stock held by the United States affiliated group is treated as related person indebtedness under the temporary regulation.

Section 1.861–10T(e) requires that third party interest expense of a United States affiliated group, in an amount equal to interest income received on excess related person indebtedness, be allocated directly to foreign source income of the group in the various separate limitation categories of section 904(d)(1). Interest expense is allocated to separate limitation categories in proportion to the amounts of related CFC obligations held by the group in each such category. Section 1.861–10T(3) is applicable for taxable years beginning after December 31, 1987.

Comments on Temporary Regulation § 1.861–10T(e)

Numerous written comments have been received with respect to § 1.861–10T(e). Several commenters have argued that proportionality of domestic and foreign group debt-to-asset ratios bears no relationship to the existence or nonexistence of tax-motivated borrowing and on-lending. Commenters have noted that related CFCs may have debt-to-asset ratios which differ significantly from those of United States affiliates by virtue of differing business requirements. Commenters have also noted that lending to related CFCs may be financed with equity or retained earnings of the affiliated group, rather than with indebtedness; in such cases, they argue, lending is not tax-motivated. To address these comments, the proposed revision of § 1.861–10T(e) utilizes a methodology which is intended to achieve a more accurate approximation of the amount of debt-financed tax-motivated on-lending. In addition, the proposed revision eliminates the need for taxpayers to obtain, and the IRS to verify, information regarding the amounts of unrelated person indebtedness owed by related CFCs.

Proposed Regulations § 1.861–10(e)

These proposed regulations require a three-step calculation. Step One determines the amount of lending by a United States affiliated group to its related CFCs that is considered potentially tax-motivated ("excess related group indebtedness"). The amount of excess related group indebtedness is the excess of the actual amount of lending to related CFCs in the current year over the amount which would have been proportionate (given the amount of the current year assets of the related CFC group) to the affiliated group's average lending to related CFCs over a five-year historical base period. Two safe harbors are provided: these proposed regulations would not apply to an affiliated group in any year for which either (i) the actual amount of a group's lending to related CFCs did not exceed the actual amount of its lending to related CFCs in the immediately preceding year or (ii) the ratio of the group's actual amount of lending to related CFCs to the total assets of its related CFC group did not exceed 0.10.

Step Two determines the amount of United States affiliated group borrowing which is treated as having been incurred to finance related CFC group indebtedness ("excess U.S. shareholder indebtedness"). The amount of excess U.S. shareholder indebtedness is the excess of the actual amount of United States affiliated group borrowing in the current year over the amount which would have been proportionate (given the amount of the current year assets of the affiliated group) to the United States affiliated group's average borrowing over the same five-year base period. For purposes of determining a proportionate amount of United States affiliated group borrowing, the amount of any excess related group indebtedness in the current year is excluded from current year assets of the United States affiliated group; this exclusion reflects the fact that the purpose of Step Two is to determine the extent to which such excess related group indebtedness is financed with United States affiliated group borrowing.

If a United States affiliated group has both excess related group indebtedness and excess U.S. shareholder indebtedness in a single taxable year, the group is treated as having engaged in tax-motivated borrowing and on-lending, and a portion of the group's excess related person indebtedness is identified as "allocable related group indebtedness." If the amount of an affiliated group's excess U.S. shareholder indebtedness exceeds its amount of excess related group indebtedness in the current year, the entire amount of excess related group indebtedness is treated as having been financed with tax-motivated borrowing, and the taxpayer is considered to have "allocable related group indebtedness" in the amount of its excess related group indebtedness. If the amount of an affiliated group's excess U.S. shareholder indebtedness does not exceed its amount of excess related group indebtedness, the taxpayer is considered to have "allocable related group indebtedness" only in the amount of its excess U.S. shareholder indebtedness.

Step Three requires that third party interest expense of the United States

affiliated group, in an amount equal to the amount of interest income received by the group on allocable related CFC group indebtedness, be allocated directly to foreign source income of the United States affiliated group. This interest expense is allocated to separate limitation categories in proportion to the United States affiliated in each category.

Special rules are provided with regard to the determination of base period ratios in the first five taxable years for which the regulation is effective and in periods following major corporate events, *e.g.*, acquisitions, dispositions and mergers. In addition, limitations are provided on the extent to which a substantial increase in a current year ratio may be reflected in the base period ratios of subsequent taxable years. Finally, several special rules are provided with respect to the classification of certain loans between related CFCs as related group indebtedness, and the treatment of certain dual character stock as related group indebtedness.

These regulations are proposed to be effective for taxable years beginning after December 31, 1990. Taxpayers, however, will be permitted to elect to apply these regulations as adopted as final regulations, instead of § 1.861–10T(e), retroactively for taxable years beginning after December 31, 1987.

Comments on Proposed Resolution § 1.861–10(e)

Comments are solicited with respect to all aspects of these proposed regulations and, in particular, the special rules governing the calculation of base period ratios after the occurrence of significant corporate events, *e.g.*, acquisitions and dispositions.

In addition, comments are invited with respect to Step Two of the proposed regulation. An alternative version of Step Two was considered in which the amount of a United States affiliated group's allocable related group indebtedness (*i.e.*, on-lending considered to be tax-motivated) would have been determined for any current taxable year by multiplying the amount of the group's excess related group indebtedness (*i.e.*, lending considered to be potentially tax-motivated) for the year by its U.S. debt-to-asset ratio for the year. Under this approach, excess related group indebtedness would be treated as financed with United States affiliated group borrowing in the same proportion that all other assets of the group are financed during the current year. This approach would be more consistent with the assumption (underlying section 864(e)) that money is fungible than is Step Two of the proposed regulation, which treats each dollar of excess related group indebtedness as financed with one dollar of excess U.S. shareholder indebtedness (to the extent that the two excess amounts are equal).

It was determined that Step Two of the proposed regulation would permit a more accurate approximation of the amount of on-lending that is in fact tax-motivated. By contrast, the alternative approach described above would have treated all excess related group indebtedness, as tax-motivated to some extent, *i.e.*, the extent to which it is debt-financed. The alternative approach has the significant advantage, however, of relative simplicity. Accordingly, taxpayers are invited to comment on the relative advantages and disadvantages of the two approaches.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Judith Cavell of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR §§ 1.861–1 through 1.997–1

Aliens, Corporate deductions, Disc, Exports, Foreign investments in U.S., Foreign tax credit, FSC, Income taxes, Source of income, U.S. investments abroad.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1 INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Section 1.861–10(e) is also issued under 26 U.S.C. 863(a), 26 U.S.C. 864(e), 26 U.S.C. 865(i) and 26 U.S.C. 7701(f).

Par. 2. Section 1.861–10, which was proposed on September 14, 1988, at 53 FR 35526, is amended by revising paragraph (e) (See 53 FR 35488) to read as follows:

§ 1.861–10 Special allocations of interest expense.

* * * * *

(e) *Treatment of certain related group indebtedness*—(1) *In general.* If, for any taxable year beginning after December 31, 1990, a U.S. shareholder (as defined in paragraph (e)(5)(i) of this section) has both—

(i) Excess related group indebtedness (as determined under Step One in paragraph (e)(2) of this section) and

(ii) Excess U.S. shareholder indebtedness (as determined under Step Two in paragraph (e)(3) of this section),

the U.S. shareholder shall allocate, to its gross income in the various separate limitation categories described in section 904(d)(1), a portion of its interest expense paid or accrued to any obligee who is not a member of the affiliated group (as defined in § 1.861–11T(d)) of the U.S. shareholder ("third party interest expense"), excluding amounts allocated under paragraphs (b) and (c) of this section. The amount of third party interest expense so allocated shall equal the total amount of interest income derived by the U.S. shareholder during the year from related group indebtedness, multiplied by the ratio of the lesser of the foregoing two amounts of excess indebtedness for the year to related group indebtedness for the year. This amount of third party interest expense is allocated as described in Step Three in paragraph (e)(4) of this section.

(2) *Step One: Excess related group indebtedness.* (i) The excess related group indebtedness of a U.S. shareholder for the year equals the amount by which its related group indebtedness for the year exceeds its allowable related group indebtedness for the year

(ii) The "related group indebtedness" of the U.S. shareholder is the average of the aggregate amounts at the beginning and end of the year of indebtedness owed to the U.S. shareholder by each controlled foreign corporation which is a related person (as defined in paragraph (e)(5)(ii) of this section) with respect to the U.S. shareholder.

(iii) The "allowable related group indebtedness" of a U.S. shareholder for the year equals—

(A) The average of the aggregate values at the beginning and end of the year of the assets (including stock holdings in and obligations of related persons, other than related controlled foreign corporations) of each related controlled foreign corporation, multiplied by

(B) The foreign base period ratio of the U.S. shareholder for the year.

(iv) The "foreign base period ratio" of the U.S. shareholder for the year is the average of the related group debt-to-asset ratios of the U.S. shareholder for each taxable year comprising the foreign base period for the current year (each a "base year"). For this purpose, however, the related group debt-to-asset ratio of the U.S. shareholder for any base year may not exceed 110 percent of the foreign base period ratio for that base year.

(v)(A) The foreign base period for any current taxable year (except as described in paragraph (e)(2)(v)(B) of this section) shall consist of the five taxable years immediately preceding the current year.

(B) The U.S. shareholder may choose as foreign base periods for all of its first five taxable years for which this paragraph (e) is effective the following alternative base periods:

(*1*) For the first effective taxable year, the 1982, 1983, 1984, 1985 and 1986 taxable years;

(*2*) For the second effective taxable year, the 1983, 1984, 1985 and 1986 taxable years and the first effective taxable year;

(*3*) For the third effective taxable year, the 1984, 1985 and 1986 taxable years and the first and second effective taxable years;

(*4*) For the fourth effective taxable year, the 1985 and 1986 taxable years and the first, second and third effective taxable years; and

(*5*) For the fifth effective taxable year, the 1986 taxable year and the first, second, third and fourth effective taxable years.

(vi) The "The related group debt-to-asset ratio" of a U.S. shareholder for a year is the ratio between—

(A) The related group indebtedness of the U.S. shareholder for the year (as determined under paragraph (e)(2)(ii) of this section), and

(B) The average of the aggregate values at the beginning and end of the year of the assets (including stock holdings in and obligations of related persons, other than related controlled foreign corporations) of each related controlled foreign corporation.

(vii) Notwithstanding paragraph (e)(2)(i) of this section, a U.S. shareholder is considered to have no excess related group indebtedness for the year if—

(A) Its related group indebtedness for the year does not exceed its related group indebtedness for the immediately preceding year (in each case, as determined under paragraph (e)(2)(ii) of this section); or

(B) Its related group debt-to-asset ratio (as determined under paragraph (e)(2)(vi) of this section) for the year does not exceed its foreign base period ratio (as determined under paragraph (e)(2)(iv) of this section) or does not exceed a ratio of 0.10.

(3) *Step Two: Excess U.S. shareholder indebtedness.* (i) The excess indebtedness of a U.S. shareholder for the year equals the amount by which its unaffiliated indebtedness for the year exceeds its allowable indebtedness for the year.

(ii) The "unaffiliated indebtedness" of the U.S. shareholder is the average of the aggregate amounts at the beginning and end of the year of indebtedness owed by the U.S. shareholder to any obligee, other than a member of the affiliated group (as defined in § 1.861–11T(d)) of the U.S. shareholder.

(iii) The "allowable indebtedness" of a U.S. shareholder for the year equals—

(A) The average of the aggregate values at the beginning and end of the year of the assets of the U.S. shareholder (including stock holdings in and obligations of related controlled foreign corporations, but excluding stock holdings in and obligations of members of the affiliated group (as defined in § 1.861–11T(d)) of the U.S. shareholder), reduced by the amount of the excess related group indebtedness of the U.S. shareholder for the year (as determined under Step One in paragraph (e)(2) of this section), multiplied by:

(B) The U.S. base period ratio of the U.S. shareholder for the year.

(iv) The "U.S. base period ratio" of the U.S. shareholder for the year is the average of the debt-to-asset ratios of the U.S. shareholder for each taxable year comprising the U.S. base period for the current year (each a "base year"). For the purpose, however, the debt-to-asset ratio of the U.S. shareholder for any base year may not exceed 110 percent of the U.S. base period ratio for that base year. Also, for this purpose, the assets of the U.S. shareholder for each base year shall include the amount of any excess related group indebtedness of the U.S. shareholder for that base year.

(v)(A) The U.S. base period for any current taxable year (except as described in paragraph (e)(3)(v)(B) of this section) shall consist of the five taxable years immediately preceding the current year.

(B) The U.S. shareholder may choose as U.S. base periods for all of its first five taxable years for which this paragraph (e) is effective the following alternative base periods:

(*1*) For the first effective taxable year, the 1982, 1983, 1984, 1985 and 1986 taxable years;

(*2*) For the second effective taxable year, the 1983, 1984, 1985 and 1986 taxable years and the first effective taxable year;

(*3*) For the third effective taxable year, the 1984, 1985 and 1986 taxable years and the first and second effective taxable years;

(*4*) For the fourth effective taxable year, the 1985 and 1986 taxable years and the first, second and third effective taxable years; and

(*5*) For the fifth effective taxable year, the 1986 taxable year and the first, second, third and fourth effective taxable years.

(vi) The "debt-to-asset ratio" of a U.S. shareholder for a year is the ratio between—

(A) The unaffiliated indebtedness of the U.S. shareholder for the year (as determined under paragraph (e)(3)(ii) of this section), and

(B) The average of the aggregate values at the beginning and end of the year of the assets of the U.S. shareholder, reduced by the amount of the excess related group indebtedness of the U.S. shareholder for the year (as determined under Step One in paragraph (e)(2) of this section). For this purpose, the assets of the U.S. shareholder include stock holdings in and obligations of related controlled foreign corporations but do not include stock holdings in and obligations of members of the affiliated group (as defined in § 1.861–11T(d)). also see paragraph (e)(3)(iv) of this section for a

special rule relating to inclusion of excess related group indebtedness of the U.S. shareholder for base years.

(vii) A U.S. shareholder is considered to have no excess indebtedness for the year if its debt-to-asset ratio (as determined under paragraph (e)(3)(vi) of this section) for the year does not exceed its U.S. base period ratio (as determined under paragraph (e)(3)(iv) of this section) for the year.

(4) *Step Three: Allocation of third party interest expense.* (i) A U.S. shareholder shall allocate among the various separate limitation categories described in section 904(d)(1) a portion of its third party interest expense incurred during the year equal in amount to the interest income dervied by the U.S. shareholder during the year from allocable related group indebtedness.

(ii) The "allocable related group indebtedness" of a U.S. shareholder for any year is an amount of related group indebtedness equal to the lesser of—

(A) The excess related group indebtedness of the U.S. shareholder for the year (determined under Step One in paragraph (e) (2) of this section), or

(B) The excess U.S. shareholder indebtedness for the year (determined under Step Two in paragraph (e)(3) of this section).

(iii) The amount of interest income derived by a U.S. shareholder from allocable related group indebtedness during the year equals the total amount of interest income derived by the U.S. shareholder during the year with respect to related group indebtedness, multiplied by the ratio of allocable related group indebtedness for the year to the aggregate amount of related group indebtedness for the year.

(iv) Third party interest expense shall be allocated in proportion to the relative average amounts of related group indebtedness held by the U.S. shareholder in each separate limitation category during the year. The remaining portion of third party interest expense of the U.S. shareholder for the year shall be apportioned as provided in §§ 1.861-8T through 1.861-13T, excluding this paragraph (e).

(v) The average amount of related group indebtedness held by the U.S. shareholder in each separate limitation category during the year equals the average of the aggregate amounts of such indebtedness in each separate limitation category at the beginning and end of the year. Solely for purposes of this paragraph (e)(4), each debt obligation of a related controlled foreign corporation held by the U.S. shareholder at the beginning or end of the year is attributed to separate limitation categories in the same manner as the stock of the obligor would be attributed under the rules of § 1.861-12T (c)(3), whether or not such stock is held directly by the U.S. shareholder.

(vi) The amount of third party interest expense of a U.S. shareholder allocated pursuant to this paragraph (e) (4) shall not exceed the total amount of the third party interest expense of the U.S. shareholder for the year (excluding any third party interest expense allocated under paragraphs (b) and (c) of this section).

(5) *Definitions.* For purposes of this paragraph (e), the following terms shall have the following meanings.

(i) *U.S. shareholder.* The term "U.S. shareholder" has the same meaning as the term "United States shareholder" when used in section 957, except that, in the case of a United States shareholder that is a member of an affiliated group (as defined in § 1.861-11T (d)), the entire affiliated group is considered to constitute a single U.S. shareholder.

(ii) Related person. For the definition of the term "related person", see § 1.861-8T(c)(2). A controlled foreign corporation is considered "related" to a U.S. shareholder if it is a related person with respect to the U.S. shareholder.

(6) *Determination of asset values.* A U.S. shareholder shall determine the values of the assets of each related controlled foreign corporation (for purposes of Step One in paragraph (e)(2) of this section) and the assets of the U.S. shareholder (for purposes of Step Two in paragraph (e)(3) of this section) for any year in accordance with the valuation method (tax book value or fair market value) elected for that year pursuant to § 1.861-9T(g) or (h).

(7) *Adjustments to asset value.* For purposes of apportioning remaining interest expense under § 1.861-9T, a U.S. shareholder shall reduce (but not below zero) the value of its assets for the year (as determined under § 1.861-9T(g)(3) or (h)) by an amount equal to the allocable related group indebtedness of the U.S. shareholder for the year (as determined under Step Three in paragraph (e)(4)(ii) of this section). This reduction is allocated among assets in each separate limitation category in proportion to the average amount of related group indebtedness held by the U.S. shareholder in each separate limitation category during the year (as determined under Step Three in paragraph (e)(4)((v) of this section).

(8) *Special rules*—(i) *Classification of liabilities as indebtedness* . For purposes of this paragraph (e), the term "indebtedness" has the same meaning that it has under section 163. A U.S. shareholder must be consistent in its classification of liabilities (whether incurred by the U.S. shareholder or by a related controlled foreign corporation) as indebtedness for purposes of this paragraph (e). The classification of a type of liability as indebtedness for purposes of this paragraph (e) shall be considered a method of accounting for purposes of section 446.

(ii) *Classification of certain loans as related group indebtedness. If*—

(A) A U.S. shareholder owns stock in a related controlled foreign corporation which is a resident of a country that—

(*1*) Does not impose a withholding tax of 5 percent or more upon payments of dividends to a U.S. shareholder, and

(*2*) Does not, for the taxable year of the controlled foreign corporation, subject the income of the controlled foreign corporation to an income tax which is greater than that percentage specified under § 1.954-1T(d)(1)(i) of the maximum rate of tax specified under section 11 of the Code, and

(B) The controlled foreign corporation has outstanding a loan or loans to one or more other related controlled foreign corporations,

then, to the extent of the aggregate amount of its capital contributions to the lending related controlled foreign corporation in taxable years beginning after December 31, 1986, the U.S. shareholder itself shall be treated as having made such loans and, thus, such loan amounts shall be considered related group indebtedness.

(iii) *Classification of certain stock as related person indebtedness.* In determining the amount of its related group indebtedness for any taxable year, a U.S. shareholder must treat as related group indebtedness its holding of stock in a related controlled foreign corporation if, during such taxable year, such related controlled foreign corporation claims a deduction under foreign law for distributions on such stock.

(9) *Corporate events*—(i) *Initial acquisition of a controlled foreign corporation.* If the foreign base period of the U.S. shareholder for any year includes a base year in which the U.S. shareholder did not hold stock in any related controlled foreign corporation, then, in computing the foreign base period ratio, the related group debt-to-asset ratio of the U.S. shareholder for any such base year shall be deemed to be 0.l0.

(ii) *Incorporation of U.S. shareholder-*(A) *Nonapplication.* This paragraph (e) does not apply to the first taxable year of the U.S. shareholder. However, this paragraph (e) does apply to all following years, including years in which later

members of the affiliated group may be incorporated.

(B) *U.S. base period ratio.* In computing the U.S. base period ratio, the U.S. base period of the U.S. shareholder shall be considered to be only the period prior to the current year that the U.S. shareholder was in existence if this prior period is less than five taxable years.

(iii) *Acquisition of additional corporations.* (A) If a U.S. shareholder acquires stock of a foreign or domestic corporation which, by reason of the acquisition, then becomes a related controlled foreign corporation or a member of the affiliated group, then in determining excess related group indebtedness or excess U.S. shareholder indebtedness, the indebtedness and assets of the acquired corporation shall be taken into account only at the end of the acquisition year and in following years. Thus, amounts of indebtedness and assets and the various debt-to-asset ratios of the U.S. shareholder existing at the beginning of the year or relating to preceding years are not recalculated to take account of indebtedness and assets of the acquired corporation existing as of dates before the end of the year. If, however, a major acquisition is made near the end of the year and a substantial distortion of values for the year would otherwise result, the taxpayer must take into account the average values of the acquired indebtedness and assets weighted to reflect the time such indebtedness is owed and assets are held by the taxpayer during the year.

(B) In the case of a reverse acquisition subject to this paragraph (e)(9), the rules of § 1.1502–75(d)(3) apply in determining which corporations are the acquiring U.S. shareholder and the acquired corporation. For this purpose, whether corporations are affiliated is determined under § 1.861–11T(d).

(C) If the stock of a U.S. shareholder is acquired by (and, by reason of such acquisition, the U.S. shareholder becomes affiliated with) a corporation described below, then such U.S. shareholder shall be considered to have acquired such corporation for purposes of the application of the rules of this paragraph (e)(9)(iii). A corporation to which this paragraph (e)(9)(iii)(C) applies is—

(*1*) Corporation which is not affiliated with any other corporation (other than another similarly described corporation) and

(*2*) Substantially all of the assets of which consist of cash, securities and stock.

(iv) *Separate group acquisition election.* (A) A U.S. shareholder may choose, solely for purposes of paragraph (e)(9)(iii) of this section, to treat its acquisition described in that paragraph as occurring immediately after the year following the acquisition year (and immediately before the next year). In this case, this paragraph (e) shall continue to apply separately to the acquired corporation or corporations as a separate group for the acquisition year and the following year but not for any later year (or portion thereof). This election, if made for an acquisition, must be made for all separate acquisitions occurring during the year, and this paragraph (e) shall continue to apply separately to each separately acquired group for the foregoing prescribed two-year period.

(B) If during this two-year period a corporation is liquidated or merged, the indebtedness and assets of the liquidated or merged corporation shall immediately (but not earlier) be considered the indebtedness and assets of the successor corporation. In addition, the liquidation or merger of a corporation in one group into a corporation in another group shall be considered a disposition by the U.S. shareholder of the first group and, thus, subject to paragraph (e)(9)(v) of this section. This rule does not apply to the liquidation or merger of a lower-tier (or upper-tier) corporation into an upper-tier (or lower-tier) corporation in the same group.

(C) For purposes of applying this paragraph (e) during this two-year period, any indebtedness owed by a controlled foreign corporation to the U.S. shareholder of another group (whether acquiring or acquired) shall be treated as indebtedness owed to the U.S. shareholder to which it is directly related and as indebtedness owed by that U.S. shareholder to an unrelated person. All other indebtedness between the two groups shall likewise be considered indebtedness owed to an unrelated person.

(v) *Dispositions.* If a U.S. shareholder disposes of stock of a foreign or domestic corporation which, by reason of the disposition, then ceases to be a related controlled foreign corporation or a member of the affiliated group (unless liquidated or merged into a related corporation), in determining excess related group indebtedness of the divested corporation shall be taken into account only at the beginning of the disposition year and for the relevant preceding years. Thus, amounts of indebtedness and assets and the various debt-to-asset ratios of the U.S. shareholder existing at the end of the year or relating to following years are not affected by indebtedness and assets of the divested corporation existing as of dates after the beginning of the year. If, however, a major disposition is made near the beginning of the year and a substantial distortion of values for the year would otherwise result, the taxpayer must take into account the average values of the divested indebtedness and assets weighted to reflect the time such indebtedness is owed and assets are held by the taxpayer during the year.

(vi) *Separate group disposition election.* A U.S. shareholder may choose, solely for purposes of paragraph (e)(9)(v) of this section, to exclude a divested corporation described in that paragraph from the related group for the disposition year and for each preceding year which is a base year solely for purposes of computation of the foreign base period ratio and U.S. base period ratio of the U.S. shareholder for the disposition year and the following year but not for any later year (or portion thereof). This election, if made for a disposition, must be made for all separate dispositions occurring during the year.

(vii) *Section 355 transactions.* A U.S. corporation which becomes a separate U.S. shareholder as a result of a distribution of its stock to which section 355 applies shall be considered—

(A) As disposed of by the U.S. shareholder of the affiliated group of which the distributing corporation is a member, with this disposition subject to the rules of paragraph (e)(9)(v) and (vi) of this section, and

(B) As having the same related group debt-to-asset ratio and debt-to-asset ratio as the distributing U.S. shareholder in each year preceding the distribution for purposes of applying this paragraph (e) to the year of distribution and following years of the distributed corporation.

(10) Example.

(i) *Facts.* X, a domestic corporation, has a calendar taxable year and apportions its interest expense on the basis of the tax book value of its assets. In 1990, X incurred deductible third-party interest expense of $24,960 on an average amount of indebtedness (determined on the basis of beginning-of-year and end-of-year amounts) of $249,600. X manufactures widgets, all of which are sold in the United States. X owns all of the stock of Y, a controlled foreign corporation that also has a calendar taxable year and is also engaged in the manufacture and sale of widgets. Y has no earnings and profits or deficit of earnings and profits attributable to taxable years prior to 1987. X's total assets and their average tax book values (determined on the basis of beginning-of-year and end-of-year tax book values) for 1990 are:

Asset	Average tax book value
Plant and equipment	$315,000
Corporate headquarters	60,000
Y stock	75,000
Y note	50,000
Total	$500,000

Y had $25,000 of income before the deduction of any interest expense. Of this total, $5,000 is high withholding tax interest income. The remaining $20,000 is derived from widget sales, and constitutes foreign source general limitation income. Assume that Y has no deductions from gross income other than interest expense. During 1990, Y paid $5,000 of interest expense to X on the Y note and $10,000 of interest expense to third parties, giving Y total interest expense of $15,000 X elects pursuant to § 1.861–9T to apportion Y's interest expense under the gross income method prescribed in section 1.861–9T (j).

(ii) *Step 1:* Using a beginning and end of year average, X (the U.S. shareholder) held the following average amounts of indebtedness of Y and Y had the following average asset values:

	1985	1986–88	1989	1990
(A) Related group indebtedness	$11,000	24,000	26,000	50,000
(B) Average Value of Assets of Related CFC	$100,000	200,000	200,000	250,000
(C) Related Group Debt-to-Asset Ratio	.11	.12	.13	.20

X's "foreign base period ratio" for 1990, an average of its ratios of related group indebtedness to related group assets for 1985 through 1989, is:

(.11 + .12 + .12 + .12 + .13)/5 = .12

X's "allowable related group indebtedness" for 1990 is:

$250,000 x .12 = $30,000.

X's "excess related group indebtedness" for 1990 is:

$50,000 − $30,000 = $20,000

X's related group indebtedness of $50,000 for 1990 is greater than its indebtedness of $26,000 for 1989, and X's related group debt-to-asset ratio for 1990 is .20, which is greater than its foreign base period ratio of .12 and greater than the ratio of .10 described in paragraph (e) (2) (vi) (B) of this section. Therefore, X's excess related group indebtedness for 1990 remains at $20,000.

(iii) *Step 2:* Using a beginning and end of year average, X has the following average amounts of U.S. and foreign indebtedness and average asset values:

	1985	1986	1987	1988	1989	1990
(1)	$231,400	225,000	225,000	225,000	220,800	249,600
(2)	445,000	450,000	450,000	450,000	460,000	480,000 (a)
(3)	.52	.50	.50	.50	.48	.52

(1) U.S. and foreign indebtedness
(2) Average value of assets of U.S. shareholder
(3) Debt-to-Asset ratio of U.S. shareholder
(a) [500,000−20,000 (excess related group indebtedness determined in Step 1)]

X's "U.S. base period ratio" for 1990 is:

(.52+.50+.50+.50+.48)/5=.50

X's "allowable indebtedness" for 1990 is:

$480,000×.50=$240,000

X's "excess U.S. shareholder indebtedness" for 1990 is:

$249,600−$240,000=$9,600

X's debt-to-asset ratio for 1990 is .52, which is greater than its base period ratio of .50. Therefore, X's excess U.S. shareholder indebtedness for 1990 remains at $9,600.

(iv) *Step 3:* Since X's excess U.S. shareholder indebtedness of $9,600 is less than its excess related group indebtedness of $20,000, X's allocable related group indebtedness for 1990 is $9,600. The amount of interest received by X during 1990 on allocable related group indebtedness is:

$$\$5{,}000 \times \frac{\$9{,}600}{\$50{,}000} = \$960$$

Therefore, $960 of X's third party interest expense ($24,960) shall be allocated among various separate limitation categories in proportion to the relative average amounts of Y obligations held by X in each such category. The amount of Y obligations in each limitation category is determined in the same manner as the stock of Y would be attributed under the rules of § 1.861–12T(c)(3). Since Y's interest expense is apportioned under the gross income method prescribed in section § 1.861–9T(j), the Y stock must be characterized under the gross income method described in § 1.861–12T(c)(3)(iii). Y's gross income net of interest expense is determined as follows:

Foreign source high withholding tax interest income. = $5,000-(($15,000) multiplied by ($5,000)/($5,000+$20,000)) = $2,000

and

Foreign source general limitation income. =$20,000-(($15,000)) multiplied by ($20,000)/($5,000+$20,000)) $8,000.

Therefore, $192 (($960×$2,000/($2,000+$8,000)) of X's third party interest expense is allocated to foreign source high withholding tax interest income and $768 ($960 x $8,000/($2,000+$8,000)) is allocated to foreign source general limitation income.

(v) As a result of these direct allocations, for purposes of apportioning X's remaining interest expense under § 1.861–9T, the value of X's assets generating foreign source general limitation income is reduced by the principal amount of indebtedness the interest on which is directly allocated to foreign source general limitation income ($7,680), and the value of X's assets generating foreign source high withholding tax interest income is reduced by the principal amount of indebtedness the interest on which is directly allocated to foreign source high withholding tax interest income ($1,920), determined as follows:

Reduction of X's assets generating foreign source general limitation income:

$$\text{X's allocable related group indebtedness} \times \frac{\text{Y's Foreign source } \textit{general limitation income}}{\text{Y's Foreign source income}}$$

$9,600 × $8,000/($8,000+$2,000)=$7,680

Reduction of X's assets generating foreign source high withholding tax interest income:

$$\text{X's allocable related group indebtedness} \times \frac{\text{Y's Foreign source high withholding tax interest income}}{\text{Y's Foreign source income}}$$

$9,600 × $2,000/($8,000+$2,000) = $1,920

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

Approved: February 20, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

(FR Doc. 91–5587 Filed 3–11–91; 8:45 am)

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund; Fee Collection and Coal Production Reporting, Reclamation Fee, Basis for Coal Weight Determination

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of inquiry.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has received questions about its policy on the amount of abandoned mine land fees (AML) owed when an operator delivers run-of-mine coal to a purchaser who then pays the operator on an estimated clean coal tonnage basis. The purpose of this inquiry is (1) to clarify once again the statutory and regulatory requirements for correctly determining the AML fee liability of operators and (2) to seek comments regarding the application of the AML fee procedures to a specific factual situation where an independent operator delivers run-of-mine coal to a preparation plant; the coal is actually cleaned, and the purchaser pays the operator on the basis of an estimated clean coal tonnage yield from the delivered run-of-mine coal.

DATES: *Written Comments:* OSM will accept written comments on this issue until close of business on April 11, 1991.

ADDRESSES: *Written Comments:* The address for written comments is: Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jane E. Robinson (202) 343–2826.

SUPPLEMENTARY INFORMATION:

I. Purpose

OSM's knowledge of the extent to which operators comply with existing AML fee payment requirements results mainly from information gained through on-site audits. As a result of these audits some companies have alleged that the OSM reclamation fee rules (1) ignore industry practices regarding the buying of coal on a "clean-coal" tonnage basis, (2) penalize small operators who must sell their run-of-mine coal to independent preparation plants on an estimated clean coal basis, and (3) preclude the coal industry's ability to utilize estimating methods for calculating coal tonnages during the cleaning process for sales purposes.

The Agency is currently investigating these complaints regarding the AML fee compliance procedures and will be assessing the overall impact of its AML fee payment requirements on the operator and the coal industry. The purpose of this notice is to provide the public with an opportunity to comment on common practice(s) used by the coal industry to determine the weight of coal an operator sells to a purchaser. Comments received in response to this notice will assist OSM in assessing the impact of its current rule on the coal industry and the AML fund. OSM will rely, in part, on information obtained through this process to substantiate a basis for any change in its policy on the determination of coal weight subject to the reclamation fee.

II. Background

Section 402(a) of the Surface Mining Control and Reclamation Act (SMCRA) requires all operators of coal mining operations subject to its provisions to pay a reclamation fee on each ton of coal produced. In December 1977 OSM first promulgated regulations to implement this provision. 42 FR 62714 (Dec. 13, 1977). Briefly, the regulations require that the AML fees must be paid on the actual gross weight of the coal, including impurities, at the time of the first transaction (sale, transfer of ownership, or use) involving the coal. This regulation has been in effect basically unchanged since 1977. In 1982, OSM revised the regulatory language to clarify the point in time of fee determination and to stress that the actual gross weight of the coal must be used for fee calculation. At that time OSM also specifically noted that no fees were owed on impurities physically removed before the sale, transfer of possession or use. In 1988 OSM once again reminded operators that the general rule, which required all impurities not removed before the first transaction to be included in the gross weight for AML fee computation purposes, was not changed by the regulatory revision allowing calculated weight reduction for excess moisture.

In order to apply this regulation OSM determines: (a) When the first transaction occurs; (b) the gross weight at the time, which includes impurities not physically removed before the transaction occurs; and (c) the actual, not estimated or calculated, gross weight at the time (or as near to the time as possible) of the transaction.

(A) First transaction

OSM generally considers the first transaction to occur when physical possession of the coal, or such other indications of ownership as title and risk of loss, transfer to a purchaser. The time that payment is computed or made is not controlling. This approach is in accord with the Uniform Commercial Code (UCC), which has been adopted in all fifty states. Section 2–401(2) of the UCC provides that:

> unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods . . .

Under UCC section 2–401(2), when an operator delivers run-of-mine coal to a buyer's preparation plant for cleaning, the transaction upon which OSM calculates the AML fees under 30 CFR 870.12(b)(1) generally occurs upon delivery. In such a case, the AML fee must be calculated based on the run-of-mine tonnage which was delivered, including any impurities.

Some operators have not understood why they must pay reclamation fees on the raw tonnage they delivered, when the price they are paid by the buyer is based on the actual clean tonnage after processing. The fact that an operator is paid on some basis other than tons of actual "raw coal" shipped is immaterial to the critical issue—that is, the transfer of title. In most cases, when coal is delivered to a preparation plant by an operator, the transaction is not for cleaning and redelivery of the coal to the operator, but for the physical transfer of ownership of the coal to the preparation plant. The purchaser in this instance has total control of the goods and exercises all the indicia and rights of ownership; i.e., right to commingle, to alter shape and form, and to sell. There is no evidence in most instances that the preparation plant ever keeps an individual operator's coal separate from other sellers nor that it maintains any documents of the actual weight, as opposed to an estimated weight of the "clean coal".

The arrangement that the purchaser has with the coal operator for determining the amount owed is only the basis for payment and does not alter the fact that when the operator loads its coal on trucks or other means of transportation and delivers the coal to the preparation plant or other purchaser, title passes upon the physical delivery of the goods. Quite simply the operator in most instances is *not* shipping the coal for cleaning but for the purpose of selling the coal. The purchaser owns all

the coal including the impurities. Accordingly, under 30 CFR 870.12 the actual gross weight includes the "impurities that have not been removed prior to the time of initial bona fide sale".

(B) Basis for Payment

Some of the concern regarding the calculation of AML fees has resulted from operators relying on the basis for payment, i.e. payment on a clean coal tonnage basis rather than on the actual gross weight of the coal at the time of initial bona fide sale, use, or transfer of ownership, as a means for determining fee liability. Such reliance is improper. The arrangement that a purchaser and a coal operator have for determining the amount owed is immaterial to determining AML fee liability and does not alter the required procedures of determining when the first transaction occurs and computing the reclamation fee based on the gross weight at that time. The AML fee is assessed on the actual gross weight of the material at the time of initial sale, transfer of ownership or use. Accordingly, if impurities have not been removed prior to the initial sale or transfer, they may not be deducted from actual gross weight used for AML fee purposes.

III. Small Operator Impact—Request for Comments

There is a perception that the AML fee rules may be unfair to the small independent operator who must sell his coal to a preparation plant for cleaning and resale purposes. In such circumstances, the Small operator is generally paid by the preparation plant on the estimated weight of the calculated clean coal tonnage, even though methods typically used to estimate the actual clean coal yield are acknowledged to be subject to wide variations and are not usually verifiable. Under these circumstances some small operators have objected to OSM's requirement for payment of reclamation fees on run-of-mine tonnage when the operator is paid on a clean coal weight. These small operators raise two specific objections. First, since they do not have the financial resources to own a preparation plant like some larger operators, they assert that they have no practical means of cleaning the coal prior to the first sale. In this circumstance, the first sale or transfer of ownership would be to the preparation plant to clean the coal. Second, even assuming that some flexibility existed regarding the transfer of coal, the small operator still maintains that he will lose under the Federal regulations because the rules require payment of the fees based on actual weight. Since coal from a variety of sources is commingled during the cleaning process, operators are paid by the preparation plants based on estimated clean coal tonnages not on actual clean coal weight.

Although some operators have complained about the unfairness of the rule, others have willingly paid reclamation fees on the raw tonnage. This may be due to the fact that the impact on some operators is less than others. For example the level of impurities in underground mined coal is generally greater than coal that is surface mined. Additionally, it can be argued that the small operator receives a benefit when the burden and cost of the disposal of reject material separated from the coal is borne by the purchaser.

OSM seeks comments, information, and recommendations from all interested parties to assist the agency in assessing the effectiveness of the current regulations in situations where the coal is cleaned by the purchaser. Specific attention is requested regarding the timing of the reclamation fee assessment, and whether OSM should allow operators whose coal is cleaned by another party, to pay on estimated clean coal tonnage rather than on actual weight. In this regard, OSM is particularly interested in receiving comments on the following:

(1) What testing methods and procedures do purchasers of run-of-mine coal use to estimate clean coal tonnage figures?

(2) How reliable are the testing methods used by the purchasers? (How much variance from actual clean coal weight can be reasonably expected?)

(3) How do operators ensure that they receive fair compensation if they are paid on estimated tonnage figures?

(4) Does the actual weight requirement help or constrain normal business operations?

(5) Are there any realistic alternatives that could be considered by the Federal Government as a substitute for the actual weight requirement?

(6) If estimated tonnage tests are permitted, how would the results be audited to ensure full compliance with the fee provisions in SMCRA?

(7) Should estimated clean coal tonnage figures be utilized for all coal produced or only for that coal which is delivered to a preparation plant for cleaning?

(8) Are small operators who must sell their run-of-mine coal to preparation plant owners or other purchasers of coal prior to cleaning receiving fair compensation for the clean coal yield in their delivered raw tonnage?

(9) What average cost per ton do coal preparation plant operators and other purchasers of coal incur for disposing of coal refuse?

(10) What quantity of coal sold annually is physically cleaned prior to use or resale? How much coal sold annually is sold on an estimated clean coal tonnage basis? What is the ratio of surface to underground tonnage sales?

(11) What are the normal business practices between small independent operators who sell their raw coal and their purchasers?

Dated: February 21, 1991.

Harry M. Snyder,

Director.

[FR Doc. 91-5799 Filed 3-11-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

48 CFR Parts 223 and 252

Department of Defense Federal Acquisition Regulation Supplement; Hazard Warning Labels

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering revision to the Defense FAR Supplement part 223 language and the addition of a clause to part 252 pertaining to hazard warning labels. The clause will require offerors and contractors to submit information on hazardous materials they propose to supply to the Government. Contractors will also be required to label packages, containing hazardous materials, to be delivered under a Government contract.

DATES: Comments on the proposed rule should be submitted in writing at the address shown below on or before April 11, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 90-025 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, OUSD(A), ATTN: Charles W. Lloyd, room 3D139, The Pentagon, Washington, DC 20301-3000.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory

(DAR) Council is proposing changes to DFARS part 223 and addition of a clause at 252.223–7006 to conform to DoD policy on obtaining and using hazard warning label information contained in DoD Instruction 6050.5, DoD Hazard Communication Program, and DoD Handbook 6050.5–H, Hazardous Chemical Warning Labeling System. This proposed rule revises the DFARS to require (1) Offerors to identify any hazardous items they propose to supply to the Government; (2) apparently successful offerors to submit warning labels that will be affixed to hazardous items; and, (3) contractors to affix hazardous warning labels on hazardous items and the containers used to package those items.

B. Regulatory Flexibility Act

This proposed rule does not appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because it requires offerors or contractors merely to generate and furnish before and with their product, a hazard warning label which they are already required to do under 29 CFR 1910.1200. Therefore, the time and financial resources necessary to comply with the proposed requirement are already invested prior to any involvement in contracting with the Government. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 610 (DAR Case 90–025) in the correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed rule does not impose any additional reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The hazard warning labels required under this proposed rule from offerors and contractors are already required by 29 CFR 1910.1200.

List of Subjects in 48 CFR Parts 223 and 252

Government procurement.

Nancy L. Ladd,

Colonel, USAF, Director, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR parts 223 and 252 be amended as follows:

1. The authority citation for 48 CFR part 223 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 223—ENVIRONMENT, CONSERVAITON, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Section 223.7202 is amended by revising paragraphs (b) and (e) to read as follows:

223.7202 Policy.

* * * * *

(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, offerors and contractors are required to submit information on hazardous materials under the clauses at 252.223–7004 and 252.223–7006. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

* * * * *

(e) The contracting officer shall provide a copy of MSDS's and hazard warning labels received from apparently successful offerors to the cognizant safety officer and/or designated official, in order to facilitate:

(1) Inclusion of relevant data in an agency MSDS information system or label information system, if applicable; and

(2) Other control, safety, or information purposes, as applicable.

3. Section 223.7203 is revised to read as follows:

§ 223.7203 Contract clauses.

The contracting officer shall insert the clauses at 252.223–7004, Hazardous Material Identification and Material Safety Data, and 252.23–7006, Hazard Warning Labels, in solicitations and contracts when one or more of the circumstances listed in 223.7202(c) exists.

4. Section 252.233–7006 is added to read as follows:

252.223–7006 Hazard warning labels

As prescribed in 223.7203, insert the following clause:

Hazard Warning Labels (XXX 1991)

(a) *Hazardous material,* as used in this clause, is defined in the clause in this contract entitled "Hazardous Material Identification and Material Safety data."

(b) The contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 *et seq*). The Standard requires that the hazard warning label conform to the requirements of the Standard unless the material is otherwise subject to the labelling requirements of one of the following statues:

(1) Federal Insecticide, Fungicide and Rodenticide Act.

(2) Federal Food, Drug and Cosmetics Act.

(3) Consumer Product Safety Act.

(4) Federal Hazardous Substances Act.

(5) Federal Alcohol Administration Act.

(c) The Offeror shall list below which hazardous material listed in the clause in this contract entitled "Hazardous Material Identification and Material Safety Data" will be labelled in accordance with one of the Acts in paragraph (b) of this clause in lieu of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

Material (If none. Insert "None.")	Act

(d) The apparently successful Offeror agrees to submit, prior to award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the clause in this contract entitled, "Hazardous Material Identification and Material Safety Data."

(e) The Contractor shall also comply with MIL–STD–129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of Claue)

[FR Doc. 91–5725 Filed 3–11–91, 8:45 am]

BILLING CODE 3810–01–M

Notices

Federal Register
Vol. 56, No. 48
Tuesday, March 12, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Joint Council on Food and Agriculture Science; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: Joint Council on Food and Agriculture Sciences.

Date: April 17-19, 1991.

Time: 1 p.m.-5 p.m., April 17, 1991; 8:30 a.m.-5 p.m., April 18, 1991; 8:30 a.m.-12 Noon, April 19, 1991.

Place: Capitol Holiday Inn, Washington, DC

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: Select accomplishments for the 1991 Accomplishments Report; receive a report on the goals and objectives of Registries of Environmental and Agricultural Professionals; receive activities reports from constituent groups; receive progress report on implementing the National Research Council's recommendations for Forestry Research; examine 1990 Farm Bill mandated Joint Council responsibilities, and determine means of accomplishments.

Contact person for agenda and more information: Dr. Mark R. Bailey, Executive Secretary, Joint Council on Food and Agricultural Sciences, suite 302, Aerospace Building, U.S. Department of Agriculture, Washington, DC 20250-2200; Telephone (202) 401-4662.

Done in Washington, DC this 27th day of February, 1991.

John Patrick Jordan,

Administrator.

[FR Doc. 91-5789 Filed 3-17-91; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

Registration of Gypsy Moth Nucleopolyhedrosis Virus, GYPCHEK®

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service gives notices of its intent to sign a Technology Transfer Agreement with ESPRO, Inc. of Columbia, Maryland, for the purpose of authorizing ESPRO to pursue the registration of a gypsy moth nucleopolyhedrosis virus registered by the Agency. The product is called GYPCHEK® is currently registered with the U.S. Environmental Protection Agency (EPA) by the Forest Service. It has been given EPA Registration Number 27586-2.

DATES: Anyone with an alternate proposal should notify the Forest Service in writing at the address below no later then April 11, 1991.

ADDRESSES: Proposals must be sent in writing to F. Dale Robertson, Chief (2100), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Knauer, Forest Pest Management, (202) 453-9600.

SUPPLEMENTARY INFORMATION: The gypsy moth is the most important pest of deciduous trees in the eastern United States. The current approach to gypsy moth management involves aerially applying biological or chemical insecticides to eliminate isolated infestations and to suppress potentially defoliating populations in areas of regulatory concern or where socio-economic impacts are projected to occur. These Federal and State cooperative suppression programs are conducted on approximately 0.5 million acres per year at an average cost of $7.5 million.

Over the past 5 years, the biological insecticide *Bacillus thuringiensis* (Bt) and the insect growth-regulating insecticide diflubenzuron (Dimilin®) have accounted for almost all of the insecticides applied aerially during cooperative gypsy moth suppression programs.

In an effort to develop a more effective and specific biological insecticide for suppression of gypsy moth populations the Forest Service registered a naturally-occurring nucleoployhedrosis virus of the gypsy moth with the U.S. Environmental Protection Agency in 1978. It is registered as GYPCHEK® (EPA Registeration Number 27586.2). Prior to 1987, the aerial application of GYPCHEK® to suppress gypsy moth populations often provided inconsistent results in terms of population reduction. This was due to many factors, including ineffective sunscreens, clogging of nozzles, and dosage restrictions. Post-1987 field evaluation of GYPCHEK® has been more consistent with the development of a more favorable sunscreen, and use of higher doses per application.

Since GYPCHEK® is specific and efficacious as a mortality agent to only gypsy moth larvae, there is a demand for its use for gypsy moth suppression, especially in environmentally sensitive areas. Unfortunately, at this time the only method available to produce this nucleopolyhedrosis virus involves laboratory rearing and infecting massive numbers of gypsy moth larvae and then recovering and processing GYPCHEK® from the virus-killed cadavers. The Animal and Plant Health Inspection Service (APHIS) and the Northeastern Forest Experiment Station have been, until recently, the only facilities rearing sufficient quantities of larvae to support the production of nucleopolyhedrosis virus. However, there is a need to "move" this production capability from the public to the private sector.

The GYPCHEK® production process is complex, with maintaining host insect quality and contamination of cadavers being major problem areas. Also, once the cadavers are produced, they must be processed into a product that can be aerially-applied through conventional spray nozzle and meet strict quality control and bioassay requirements. For the past 3 years, the Forest Service has provided funds to APHIS to support laboratory production of nucleopolyhedrosis virus-infected larvae and to the Northeastern Forest Experiment Station to support small-scale production and processing. These cooperative efforts have resulted in the production of approximately 3,000 acre treatments of GYPCHEK® per year. This product has been used for semi-operational control of gypsy moth larvae, primarily within the Appalachian Gypsy Moth Integrated Pest Management Demonstration Project area in West Virginia. Bioassay of

nucleopolyhedrosis virus-infected cadavers and the final composite product is done by the Forest Service for quality control purposes.

In 1989, ESPRO, Inc. entered into a Technology Transfer Agreement with the Forest Service to produce a sufficient quality of nucleopolyhedrosis virus-infected cadavers to produce 1,000 acre treatments of GYPCHEK®. In 1990, after the expiration of the original Technology Transfer Agreement, a contract (Number 53–3187–1–01) was awarded by the Forest Service to ESPRO for the production of at least 10,000 acre treatments of GYPCHEK® per year. Currently, ESPRO is the only private sector firm known to have the cabability to produce GYPCHEK® using this process.

A copy of the proposed new Technology Transfer Agreement to authorize ESPRO to pursue the registration of GYPCHEK® is set out at the end of this notice.

Dated: March 4, 1991.

Allan J. Ulest,

Deputy Chief.

Technology Transfer Agreement 90–TT–01 Between ESPRO, Inc. and the USDA Forest Service

This agreement, made and entered into by and between ESPRO, Inc., hereinafter referred to as the Company and the U.S. Department of Agriculture, Forest Service, hereinafter referred to as the Cooperating Institution respectively, under the provisions of the Stevenson-Wydler Technology Transfer Act of 1986 (15 U.S.C. 3710a),

Witnesseth:

Whereas, the parties hereto are mutually interested in:

1. Pooling resources in support of authorizing the transfer of technology of mutual interest among the cooperators by further evaluating private sector capabilities to commercially produce and distribute pest management alternatives such as the gypsy moth (GM) nucleopolyhedrosis virus (NPV). This virus is registered with the U.S. Environmental Protection Agency (EPA) and is known as Gypchek. Its EPA registration number is 27586–2.

Now, therefore the parties agree to:

1. Allow Espro, Inc. to pursue the registration of Gypchek or its equivalent.

2. Encourage private sector production, processing, distribution, and use of Gypchek, the nucleopolyhedrosis virus of the gypsy moth (*Lymantria dispar*).

3. Encourage the development of one or more environmentally-safe products suitable for gypsy moth management.

4. Pay their own expenses without exchange of funds.

In addition, and in consideration of the above premises, the parties hereto agree as follows:

A. The company shall:

1. Produce Gypchek for the USDA Forest Service as per the independent contract (No. 53–3187–1–01) that The Company has with The Cooperating Institution;

2. Request EPA registration of Gypchek or its equivalent using the FIFRA Section 3, registration process;

3. Use the EPA, FIFRA Sec. 3, registration process to cite all data (40 CFR 152.8) in the FS Gypchek registration package and secure a separate registration;

4. Request that EPA grant The Company the same data waivers for a biological ("safer") pesticide that have been granted The Cooperating Institution;

5. Pay EPA for all applicable annual pesticide registration maintenance fees;

6. Return all rights for Gypchek registration to The Cooperating Institution in the event The Company cannot perform under this Technology Transfer Agreement for whatever reason;

7. Conduct and pay for any additional tests required by EPA to maintain the registration of Gypchek or its equivalent registered by the Company;

8. Not hold the Federal Government liable for any misue of Gypchek or its equivalent. This would include losses to property or injuries resulting from actions taken under this agreement.

B. The cooperating institution shall:

1. Allow The Company to use The Cooperating Institution's data to obtain a FIFRA, Sec. 3 registration of the nucleopolyhedrosis virus of the gypsy moth;

2. Allow The Company to cite all data in the current Gypchek registration package without compensation;

3. Maintain the current Gypchek registration (No. 27586–2) to allow for additional research and development and until such time as The Company can demonstrate a capability to produce, market, and ensure (through appropriate labeling/training etc.) product efficacy and safety of Gypchek or an equivalent product registered by The Company;

4. Cooperate with The Company in their efforts to produce, distribute, and encourage the use of Gypchek or its equivalent;

5. Notify EPA that we are allowing The Company to obtain a FIFRA, Sec. 3 registration of the gypsy moth nucleopolyhedrosis virus;

6. Allow The Company to request the deletion of the statement "For Use By or Under the Supervision of the U.S. Forest Service," as currently specified on EPA label No. 27586–2;

7. Work jointly with The Company to ensure that proper field and pilot testing are done for future Gypchek-like products prior to recommending their operational use; and

8. Provide for project coordination and technical assistance out of Forest Pest Management, Washington Office.

C. It is mutually agreed and understood by and among the said parties that:

1. *Legal Authority:* The Company possesses legal authority to enter into this Technology Transfer Agreement. The official representative of the Company has been authorized to act in connection with the agreement and to provide such additional information as may be required.

2. *Effective Date:* This Agreement shall be deemed made upon execution by all parties hereto and as of the last date signed below.

3. *Duration, Term, and Termination:* The collaborative activities conducted under this Agreement shall have a duration lasting until December 31, 1992, unless otherwise extended by mutual agreement of the parties or cancelled by The Company or the USDA Forest Service giving sixty (60) days prior written notice to the other party. If cancelled by either party, the Company will reimburse The Cooperating Institution for any outstanding obligations The Cooperating Institution cannot cancel. The Cooperating Institution shall not incur any new obligations after the effective date of cancellation and shall cancel as many outstanding obligations as possible. Cancellation of this collaborative effort shall not affect any right and obligations of the parties accruing from the collaborative effort up to the date of cancellation. After such cancellation neither party shall have any obligation to the other party with regard to any efforts by either party in the area of the colaborative effort except as required by this Agreement in relation to obligations accruing prior to cancellation.

4. *Member of Congress:* No member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

5. *Confidential Business Information:* a. Business and technical information disclosed by The Company to The Cooperating Institution shall be considered confidential: (1) When

disclosure would likely impair the Government's ability to obtain the necessary information in the future; or (2) when disclosure would likely cause substantial harm to the competitive position of The Company; or (3) when indicated by The Company at the time of its disclosure to The Cooperating Institution as being the confidential or proprietary information of the Company. It is recognized and ageed to by The Company that meeting only criteria (1) and (2), above, can avoid disclosure pursuant to requests made under the Freedom of Information Act (FOIA). Prior to making any disclosure of such information under the FOIA, The Cooperating Institution shall give The Company twenty (20) days written prior notice and the opportunity within such twenty-day period to indicate the The Cooperating Institution that information proposed to be disclosed by it should not be bisclosed because it meets criteria (1) or (2) above.

b. Information developed in the course of the work performed under this Agreement shall be considered confidential and shall not be disclosed by either party until the earlier of: (1) One year following completion of this collaborative effort; (2) a patent incorporating the information to be disclosed is filed; (3) it is decided not to file for a patent on the subject matter proposed to be disclosed; or (4) permission in writing to disclose is given by the oterh party.

6. *Civil Rights Act:* The Company shall comply with title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and in accordance with Title VI of the Act, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

7. *Sex Discrimination:* The Company shall comnply with Title IX of the Education Amendments of 1972, 20 J.S.C. 1681, and following which prohibits discrimination on the basis of sex in Federally-assisted programs.

8. *Handicap Discrimination:* The Company shall comply with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. Section 504 provides that no otherwise qualified handicapped individuals shall solely by reason of their handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

9. *Age Discrimination:* The Company shall comply with the Age Discrimination Act of 1975, 42 U.S.C., 6101–6107, which prohibits unreasonable discrimination based on age, in programs or activities receiving Federal financial assistance.

10. *Clean Air Act:* The Company shall comply with the Clean Air Act of 1970, 42 U.S.C. 7401 and following, which requires Federally-assisted activities to be in conformance with State (Clean Air) Implementation Plans.

11. *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended:* The Company shall comply with FIFRA 7 U.S.C., part 136, as amended.

12. *Good Laboratory Practices (GLP) Final Rules under FIFRA:* The Company shall comply with GLPs promulgated by EPA under FIFRA (40 CFR, part 160, August 17, 1990).

[FR Doc. 91–5808 Filed 3–11–91; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 511]

Resolution and Order Approving the Application of the Greater Rockford Airport Authority for a Foreign-Trade Zone in Rockford, IL

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Rockford Airport Authority, filed with the Foreign-Trade Zones Board on March 26, 1990, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Rockford, Illinois, within the Rockford Customs user fee airport facility, the Board, finding the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish, Operate, and Maintain a Foreign-Trade Zone in Rockford, IL

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Greater Rockford Airport Authority (the Grantee), has made application (filed March 26, 1990, FTZ Docket 14–90, 55 FR 13301, 4/10/90) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Rockford, Illinois, within the Rockford Customs user fee airport facility;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, (the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 176, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 1st day of March, 1991, pursuant to Order of The Board.

Foreign—Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-5754 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-05-M

International Trade Administration

[C-357-001]

Leather Wearing Apparel from Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On November 23, 1990, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Argentina. We have now completed that review and determine the total bounty or grant to be zero for the period January 1, 1987 through December 31, 1987.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 48883) the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Argentina (48 FR 11480; March 18, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of Argentine leather, coats, jackets, and other apparel including leather vests, pants, and shorts for men, boys, women, girls and infants. Also included are outer shells and parts and pieces of leather wearing apparel. During the review period, such merchandise was classifiable under item numbers 791.7620, 791.7640 and 791.7660 of the "Tariff Schedules of the United States Annotated" (TSUSA). This merchandise is currently classifiable under item number 4203.10.40 of the "Harmonized Tariff Schedule" (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987 and four programs.

Analysis of Programs

We gave interested parties an comment on the preliminary results. We received no comments.

Preliminary Results of Review

As a result of our review, we determine the total bounty or grant to be zero for the period January 1, 1987 through December 31, 1987.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987.

Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5801 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On May 21, 1990, the Department of Commerce published the preliminary results of its administrative reviews of the countervailing duty order on live swine from Canada. We have now completed those reviews and determine the net subsidy for the period April 1, 1986 through March 31, 1987 to be Can$0.0001/lb. for sows and boars and Can$0.0039/lb. for all other live swine; for the period April 1, 1987 through March 31, 1988 to be Can$0.0030/lb. for sows and boars and Can$0.0032/lb. for other live swine. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* rates. The rate is *de minimis* for sows and boars for the April 1, 1986 through March 31, 1987 review period and all other live swine for both review periods.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 20612) the preliminary results of its administrative reviews of the countervailing duty order on live swine from Canada (50 FR 32880; August 15, 1985). The Department has now completed those administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by these reviews are shipments of live swine from Canada. During the review periods, such merchandise was classifiable under item number 100.8500 of the "Tariff Schedules of the United States Annotated" TSUSA). This merchandise is currently classifiable under item numbers 0103.91.00 and 0103.92.00 of the "Harmonized Tariff Schedule" (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods April 1, 1986 to March 31, 1987 and April 1, 1987 to March 31, 1988, and 35 programs: (1) Agricultural Stabilization Act, (2) Feed Freight Assistance Program, (3) National Tripartite Red Meat Stabilization Program, (4) Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement, (5) Canada/Quebec Subsidiary Agreement on Agri-Food Development, (6) Saskatchewan Hog Assured Returns Program, (7) British Columbia Farm Income Insurance Plan, (8) Manitoba Hog Income Stabilization Plan, (9) New Brunswick Hog Price Stabilization Plan, (10) Newfoundland Hog Price Support Program, (11) Nova Scotia Pork Price Stabilization Program, (12) Prince Edward Island Price Stabilization Program, (13 Quebec Farm Income Stabilization Insurance Programs, (14) Alberta Crow Benefits Offset Program, (15) New Brunswick Swine Assistance Program, (16) New Brunswick Livestock Incentives Program, (17) New Brunswick Hog Marketing Program, (18) New Burnswick Swine Industry Financial Restructuring Program, (19) New Brunswick Swine Assistance Policy on Boars, (20) Newfoundland WEanling Bonus Incentive Policy, (21) Nova Scotia Swine Herd Health Policy, (22) Nova Scotia Transportation Assistance, (23) Nova Scotia Improved Sire Policy, (24) Ontario Farm Tax Rebate Program, (25) Ontario (Northern) Livestock Improvement and Transportation Assistance Programs, (26) Ontario Weaner Pig Stabilization Plan, (27) Ontario Pork Industry Improvement Plan, (28) Prince Edward Island (PEI) Hog Marketing and Transportation Subsidies, (29) PEI Swine Development Program, (30) PEI Interest Payments on Assembly Yard Loan, (31) PEI Swine Incentive Policy Program, (32) Quebec Productivity Improvement and Consolidation of Livestock Production Program, (33) Quebec Regional Development Assistance Program, (34) Saskatchewan Livestock Investment Tax Credit, and (35) Saskatchewan Livestock Facilities Tax Credit Program.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Case briefs were submitted by the petitioner, the National Pork Producers Council (NPPC), and two parties to the procedding, the Canadian Pork Council (CPC) and the Government of Quebec (GOQ). Rebuttal briefs were submitted by the petitioner and the CPC. At the request of the CPC, we held a public hearing on July 9, 1990.

Comment 1: Petitioner argues that the Department incorrectly calculated the benefit from the Ontario Farm Tax Rebate Program using the percentage of farmers in the $5,000 to $8,000 income range in the province rather than the percentage of farmers in the same income range in Eastern and Northern Ontario. Petitioner contends that the existence of a lower threshold for Eastern and Northern Ontario suggests that such farmers are more heavily concentrated there than in the rest of the province.

CPC points out that Ontario does not have farm income information by regions for the periods under review and agrees with the Department's methodology. However, CPC points out that, in the preliminary results, the Department calculated the benefit based on the entire amount of the tax rebate in each review period, rather than on the share of the rebate attributable to farmers in the $5,000 to $8,000 income range. CPC requests that the Department recalculate the benefit to accurately reflect the methodology stated in the preliminary results.

Department's Position: The data furnished by the Canadian government during the review periods does not allow us to calculate the concentration of farmers in the $5,000 to $8,000 income range in Eastern and Northern Ontario. Therefore, to calculate the benefit from this program, the Department used information on farmers's income from the 1986 Census of Agriculture, Statistics Canada, as best information available. This is consistent with *Alberta Pork Producers' Marketing Board* v. *United States*, 669 F.Supp. 445, 457–58 (1987).

In accordance with the CPC's comment, the Department has revised its calculations using the percentage of the total payout made to swine farmers in the $5,000 to $8,000 range during the 1986/87 and 1987/88 review periods. Based on these calculations, we determine the benefits during both review periods to be significantly less than Can$0.0001/lb., which is effectively zero, for both sows and boars and all other live swine.

Comment 2: Petitioner argues that, even though no benefits were provided to producers under the Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement and the Canada/Quebec Subsidiary Agreement on Agri-Food Development programs during the periods of review, the Department should determine that the provincial contributions to these joint federal/provincial programs are countervailable because these programs provide benefits to a specific enterprise or industry, or group of enterprises or industries.

The CPC disagrees and asserts that such a determination would be premature, erroneous and constitute an advisory opinion. Furthermore, CPC submits that both programs involve a large number and a variety of agricultural products and therefore, the provincial governments' contributions are not limited to a specific enterprise or industry, or group of enterprises or industries.

Department's Position: It is the Department's practice not to address the countervailability of programs that producers/exporters of merchandise subject to a group of enterprises or industries.

Department's Position: It is the Department's practice not to address the countervailability of programs that producers/exporters of merchandise subject to a countervailing duty order have not used.

Comment 3: CPC contends that the Department has failed to consider all of the information provided by the Government of Canada in making its determination that the Tripartite agreements are counteravailable. Further, the Department's description of the Tripartite scheme for hogs is not accurate and if all the facts are considered fairly, the Tripartite stabilization program does not meet the four-part "specificity test" and is thus not countervailable.

In examining *de facto* selective treatmen', CPC argues that the

Department has focused too narrowly on the number of commodities for which there already are finalized Tripartite agreements, rather than recognizing Tripartite as a new, expanding program having the stated purpose to include all agricultural products. CPC points out that ongoing negotiations have resulted in more than doubling the number of commodities covered by agreements, from four during 1986/87 to ten by March 31, 1988. Because there were no payouts from the Tripartite plan for hogs during the periods of review, CPC contends hog producers were not "dominant" users nor did they receive disproportionately large benefits from the Tripartite plans. Finally, CPC contends that the legitimate exercise of governmental discretion, based not on undue political considerations, but on objective, neutral, and economic factors, is not evidence of selective treatment in the sense intended by the Department's regulations. Neither in the statutory language nor in the legislative history of the U.S. countervailing duty law is there any indication that Congress intended the Department to examine the decision-making processes of a trading partner in the conduct of its domestic economic programs.

Department's Position: No benefits were received under the Tripartite Program during either review period. Any issue related to its countervailability is therefore moot. *See* Comment 2.

Comment 4: CPC disputes the Department's determination that the Feed Freight Assistance Program (FFA) is a countervailable subsidy to live swine producers. CPC emphasizes that payments are made to livestock feed manufacturers who transform feed grains into commercial feed to be sold to livestock producers. Payments are made only incidentally to livestock producers based on their capacity to produce livestock feed, not as a livestock producer. There is no requirement that any of the feed produced be used to feed swine. Furthermore, since feed is obviously a different product from live swine, it can only be considered an input into the final product, live swine, and an upstream subsidy investigation must be conducted before countervailing duties are assessed to offset FFA benefits.

CPC also points out the statutory language and regulations limit benefits only to users to grain in "grain deficit" regions of Eastern Canada and British Columbia. CPC therefore states that the Department must amend its calculations and trade-weight the amount of the benefit.

Department's Position: In the Preliminary Results, we preliminarily determined that this program is countervailable because it is limited to a specific enterprise or industry, or group of enterprises or industries. The Department countervailed only the amount of FFA benefits paid to livestock producers who have indicated that they raise hogs. FFA benefits, in the form of reduced costs for feed, result in a direct reduction in the cost of production of hogs. Therefore, the Department is not required to conduct an upstream subsidy investigation under section 771A (*See "United States-Canada Binational Panel Review of Fresh Chilled and Frozen Pork, Secretariat File No. USA-89-1904-06"* September 28, 1990 at page 57). In these reviews, CPC submitted no new information addressing the requirements for an upstream subsidy investigation. Therefore, the Department's determination remains unchanged.

The Department has noted that the eligibility for benefits is restricted to Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories. The Federal Government's questionnaire response did not break out payouts according to regions; therefore, to calculate the benefit, we allocated five percent of the total payout made during each of the periods of review over hog production in Eastern Canada (including ⅔ of Ontario, all of Quebec and the Maritime Provinces) and British Columbia. We then weight-averaged the benefit by the percent of total Canadian exports accounted for by these areas, resulting in a benefit during both review periods of Can$0.0001/lb., for both sows and boards and all other live swine.

Comment 5: CPC argues that the Alberta Crow Benefit Offset Program (Offset Program) is not a countervailable subsidy. They assert that the Federal Crow Benefit payment to railways shipping grain from Manitoba, Saskatchewan and Alberta to other parts of Canada reduces grain producers' shipping costs. Lower shipping costs for grain producers result in artificially higher prices for grain to Alberta users because the price of grain in Alberta is the market price of grain at the port of export net of transportation costs. The high price of grain places Alberta livestock producers at a comparative disadvantage with respect to producers outside of Alberta. The Offset Program partially counteracts this disadvantage created by the federal program, allowing livestock producers to buy grain feed at competitive prices and to maintain livestock production on a competitive basis.

CPC compares the benefits of the Offset Program to the benefits determined by the Department not to be countervailable in "Certain Steel Products from the Federal Republic of Germany" (47 FR 39345; Sept. 7, 1982). In that instance, because the Federal Republic of Germany (FRG) restricted imports of coking coal, steel producers were prevented from buying coal at lower world prices. Because these import restrictions created a competitive disadvantage for steel producers, the FRG began subsidizing the coking coal used by the steel industry. The Department determined that the production assistance and the import restrictions for coal were "inseparably linked": i.e., "one action simply renders the other null and void" resulting in no "economic benefit" to the steel industry. CPC contends that the Offset Program is similarly designed to counteract the disadvantage to Alberta feed users caused by a related federal program.

If, despite the parallels with the FRG steel case, the Department does determine that the Offset Program benefits hog producers, CPC states that the Department must conduct an upstream subsidy investigation since the direct benefits of the federal program go to the producers of grain, an input to live swine. Unless and until an upstream subsidy investigation is carried out, the benefit, if any, to hog producers from the Offset Program cannot be measured.

CPC asserts that the Department incorrectly calculated the benefit from this program relying on erroneous, unverified information from the "Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada," (54 FR 30774; July 24, 1989) (Pork). They submit copies of affidavits attesting that 10 percent instead of 15 percent of barley produced in Alberta is consumed by swine. CPC also contends that the Department has taken no notice that barley accounts for only 10 percent of Alberta's total crop production and that therefore hogs consume significantly less than 10 percent of total Alberta's feed grain production. Should the Department find that the Offset Program provides a benefit and that the benefit flows to hog producers, CPC suggests an alternative methodology to calculate the benefit. CPC proposes that the Department divide the amount of Farm Cash Receipts for Hogs for 1988 by the amount of Farm Cash Receipts for all commodities. This figure (5.48 percent) should be used to calculate the only measurable benefit under the Offset Program from payments that have been

made for grain ultimately consumed by hogs.

Department's Position: We disagree with CPC. Certificates are issued directly to Alberta grain users enabling them to buy feed grain from the feedmill or grain producers at the market price less the value of the certificate. Therefore, the certificates benefit the grain users by reducing the cost of grain in Alberta.

The FRG steel determination is not relevant in this case. The Department determined that the coal subsidies and the import restrictions benefit the coal industry. The steel industry not only did not receive any direct benefits, but also was put at a competitive disadvantage since it was forced to buy the input, coal, at the higher domestic prices. Although the Crow Benefit payments result in higher prices in Alberta, we are not aware of any restrictions preventing Alberta's livestock producers from buying cheaper feed grains outside Alberta.

Because the subsidy from this program goes directly to the hog producers reducing their cost of a primary input, an upstream investigation is not required (See "United States-Canada Binational Panel Review of Fresh, Chilled and Frozen Pork" Secretariat File No. USA-89-1904-06, September 28, 1990 at page 66).

However, we have recalculated the benefit from this program. Based on the methodology in the cost model used by the National Tripartite Hog Stabilization Committee to calculate hog support prices, we first calculated that it takes 630 pounds of grains to produce one hog by multipling the live weight gained by a hog from the weanling to the market stage (180 lbs.) by the grains conversion ratio of 3.5, provided in the "Economic Indicators of the Farm Sector, Cost of Production—Livestock and Dairy, 1989", a U.S. Department of Agriculture publication. We then found the total amount of grains consumed by hogs in Alberta by multipling Alberta's total hog production by the quantity of feed consumed by each hog. By dividing the result by the total grain fed to all livestock in Alberta, we found that 12.75 percent of total grain is consumed by hogs. Therefore, to calculate the benefit from this program, we multiplied 12.75 percent by the total payout to fed grain users in Alberta and divided the result by the total weight of all live swine including sows and boars produced in Alberta. We then weight-averaged the benefit by Alberta's share of all live swine including sows and boars exported to the United States. On this basis, we determine the benefit for both sows and boars and all other live swine to be Can$0.0023/lb. for the 1987/88 review period.

Comment 6: CPC disputes the determination that four breeding stock programs are countervailable: New Brunswick Swine Assistance Policy on Boars, New Brunswick Livestock Incentives Program, Nova Scotia Improved Sire Policy, and Ontario (Northern) Livestock Improvement Program. CPC claims that "breeding stock, bred and sold as breeding stock, is not covered by this order on live swine."

Petitioner points out that payments from these programs go directly to the producers of live swine and are not limited to persons who deal exclusively in buying, breeding, and selling breeding stock.

Department's Position: We disagree with CPC. The benefits from these programs go directly to hog producers, not breeding stock producers, to aid in the purchase of breeding stock to upgrade the quality of their herds. Therefore, we determine that the programs are countervailable.

Comment 7: CPC asserts that the calculations for the 1986/87 review period should be revised to correct the following clerical errors: (1) The Department's calculations included incorrect individual provinces' percentages of total Canadian exports of live swine; (2) the Manitoba Hog Income Stabilization Plan benefits were overstated due to a typographical error; (3) the amount used for the benefit under the Prince Edward Island Price Stabilization Program (PEIPSP) was incorrect; (4) the Saskatchewan Investment Tax Credit was incorrectly calculated; (5) the FFA benefits should have been weighted by exports from each province; and (6) ASA benefits should have been broken out by province.

Department's Position: We agree with CPC and have revised our calculations accordingly. As a result, for the 1986/87 review period, we determine the benefits to be: zero for sows and boars and Can$0.0029/lb. for all other live swine from the Manitoba Hog Income Stabilization Plan; zero for sows and boars and significantly less than Can$0.0001/lb., which is effectively zero, for all other live swine from the PEIPSP; and zero for sows and boars and Can$0.0001/lb. for all other live swine from the Saskatchewan Investment Tax Credit Program.

Comment 8: CPC objects to the Department's determination, based on information submitted in the previous review, not to factor out the producer contributions in the Nova Scotia Pork Price Stabilization Program (NSPPSP). CPC contends that the Department has no authority to use information without incorporating appropriate documentation in the record and asks the Department to fully explain the methodology followed in calculating the benefits.

Department's Position: The questionnaire response in the instant reviews states that no changes have been made to the Nova Scotia Natural Products Act—PPSP (the Act) since 1985. The 1985 amendment to the Act, summarized in Nova Scotia's questionnaire response in the 1985/86 review, which we have incorporated into the record, stipulated that contributions by producers to this program would be used to pay off an existing industry loan. The questionnaire response showed no producer contributions to the payout during the review period. In accordance with the 1985 amendment and with the information submitted in the questionnaire response, we considered the total payout to be a grant and allocated the benefit over the total production minus sows and boars. We then weight-averaged the benefit by Nova Scotia's portion of total Canadian exports minus sows and boars, for a benefit of zero for sows and boars, and significantly less than Can$0.0001/lb., which is effectively zero, for all other live swine for both periods of review.

Comment 9: The Government of Quebec (GOQ) argues that the Department erred in determining that the Farm Income Stabilization Insurance Program (FISI) is countervailable because it is not limited, in law or in fact, to a specific group of enterprises or industries and there is no evidence in the record of exclusion or targeting.

The petitioner maintains that the FISI program has previously been found countervailable. Further, under the authority of the FISI Act, the GOQ is permitted to "order, for any product or group of products it indicates, the establishment of a farm income stabilization insurance scheme established for the whole of Quebec or any region of Quebec it designates."

Department's Position: The Quebec statute governing the FISI program states that any product or group of products may have an income stabilization insurance scheme established. The Department has determined that only a limited number of commodity producers have received income stabilization benefits. Because benefits provided under this program are limited to a specific group of enterprises or industries, the Department has determined that this

program is countervailable. *See Alberta Pork Producers' Marketing Board* v. *United States*, 687 F.Supp. 445 (CIT 1987). As a result, we have calculated a countervailable benefit of zero for sows and boars for both review periods; for all other live swine, Can$0.0001/lb. for the 1986/87 review period and significantly less than Can$0.0001/lb., which is effectively zero, for the 1987/88 review period.

Comment 10: CPC contends that the payments under the Quebec Farm Income Stabilization Insurance Programs (FISI) used to calculate the benefits in the 1986/87 review period have been countervailed in the previous review.

Department's Position: According to information submitted in the questionnaire response, payments from the FISI program are calculated on a crop year basis. Since the crop year for piglets is July 1 through June 30, payouts of the benefits for piglets are made at the end of June. The date of the payments for the 1985/86 crop year falls within our 1986/87 review period. Therefore, we included them in the calculations of benefits under this program. They were not included in the calculation of the benefits for the 1985/86 review period.

Comment 11: CPC asserts that the Department did not explain how it reached the figure used to calculate the benefits from the Quebec FISI program during the 1987/88 review period.

Department's Position: We have amended our calculations to include ⅔ of the compensation payment figure shown in FISI's financial statement for fiscal year 1987/88. This results in a benefit that is zero for sows and boars and significantly less than Can$0.0001/lb., which is effectively zero, for all other live swine for the review period.

Comment 12: CPC asserts that the Saskatchewan Livestock Facilities Tax Credit (SLFTC) benefit for the 1987/88 review period was overstated due to a typographical error.

Department's Position: We agree and have revised our calculations accordingly. On this basis, we determine the benefit for both sows and boars and all other live swine to be significantly less than Can$0.0001/lb., which is effectively zero, for the 1987/88 review period.

Comment 13: CPC asserts that, for the 1987/88 review period, for purposes of the *de minimis* calculations, the rate for both sows and boars should be rounded up from Can$0.0029/lb. to Can $0.003/lb.; and for live swine, it should be rounded up from Can$0.0039/lb. to $0.004/lb.

Department's Position: Using more detailed information submitted in the questionnaire response, we revised our *de minimis* calculations. For each review period, we calculated a separate provincial yearly average price for both sows and boars and for all other live swine. We then weight-averaged the average provincial prices by the portion of exports from each province and summed the results. We multiplied this weighted-average figure by 0.50 percent. Based on the result, we determine that rates of less than Can$0.0026/lb. for sows and boars and Can$0.0041/lb. for all other live swine are *de minimis* for the 1986/87 review period; rates of less than Can$0.0023/lb. for sows and boars and Can$0.0038/lb. for all other live swine are *de minimis* for the 1987/88 review period.

Final Results of Review

After reviewing the comments received, we determine the net subsidy for the period April 1, 1986 through March 31, 1987 to be Can$0.0001/lb. for sows and boars and Can$0.0039/lb. for all other live swine; for the period April 1, 1987 through March 31, 1988 to be Can$0.0030/lb. for sows and boars and Can$0.0032/lb. for all other live swine. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We converted the cents-per-pound rates to *ad valorem* rates. The rate is *de minimis* for sows and boars for the April 1, 1986 through March 31, 1987 and for all other live swine for both review periods.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of sows and boars exported on or after April 1, 1986 and on or before March 31, 1987, and of all other live swine exported on or after April 1, 1986 and on or before March 31, 1988. Further, the Department will instruct the Customs Serivce to assess countervailing dutics of Can$0.0030/lb. on all shipments of sows and boars exported on or after April 1, 1987 and on or before March 31, 1988.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of Can$0.0030/lb. on all shipments of sows and boars and to waive cash deposits of estimated countervailing duties for all other live swine entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: March 5, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5802 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-056]

Melamine From Japan; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on melamine from Japan.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 4039) its intent to revoke the antidumping finding on melamine from Japan (42 FR 6366, February 2, 1977). The Department may revoke a finding if the Secretary concludes that the finding is no longer of interest to interested parties. We did not receive a request for an administrative review of the finding for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke the finding pursuant to 19 CFR 353.25(d)(4).

On February 20, 1991, Melamine Chemicals, Inc., one of the petitioners, objected to our intent to revoke the finding.

Dated: March 4, 1991.

Joseph A. Spetrini,

Deputy Assistance Secretary for Compliance.

[FR Doc. 91-5800 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-013]

Portland Hydraulic Cement and Cement Clinker From Mexico; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review and intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce has information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico. Because the U.S. cement industry is not interested in having the International Trade Commission conduct a section 332 investigation and, consequently, is not interested in maintaining the countervailing duty order, we intend to revoke the order. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: August 24, 1986.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On September 21, 1983, the Department of Commerce (the Department) published in the **Federal Register** (48 FR 43063) a notice of final affirmative countervailing duty determination and countervailing duty order on portland hydraulic cement and cement clinker from Mexico. At the time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and international law. Countervailing duties were imposed upon this merchandise, which was and remains duty free, without a determination that these entries were injuring the relevant domestic industry.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade (GATT). Consistent with our earlier positions in "Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129; October 6, 1982) and "Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order" (50 FR 19561; May 9, 1985), the Department has concluded that it lacks the authority under Article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended (the Tariff Act), to levy countervailing duties on duty-free imports from Mexico entered on or after August 24, 1986, absent a determination regarding injury to the domestic industry.

In order to fulfill our international obligations, we have developed procedures whereby the U.S. International Trade Commission (ITC) will, at the request of the United States Trade Representative (USTR), conduct an investigation pursuant to section 332 of the Tariff Act to assess whether (1) An industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded, if the Department were to revoke the outstanding countervailing duty order on portland hydraulic cement and cement clinker from Mexico.

In response to a November 26, 1990 request from USTR, the ITC instituted an investigation on the conditions of competition between U.S. and Mexican portland hydraulic cement and cement clinker in the U.S. market (55 FR 53203; December 27, 1990). The ITC invited parties interested in the continuation of the investigation to provide relevant information in order to determine whether there was sufficient interest in the investigation. On February 6, 1991, the ITC terminated its investigation after concluding, based on comments submitted by the Ad Hoc Committee of Producers of Gray Portland Cement and the Embassy of Mexico, that there was insufficient interest for the continuation of the investigation (56 FR 4852).

Scope of Review

Imports covered by this review are shipments of Mexican portland hydraulic cement and cement clinker other than white, non-staining. Through 1988, such merchandise was classifiable under items 511.1420 and 511.1440 of the "Tariff Schedules of the United States Annotated" (TSUSA). This merchandise is currently classifiable under item numbers 2523.10.00, 2523.29.00, 2523.30.00 and 2523.90.00 of the "Harmonized Tariff Schedule" (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Initiation, Preliminary Results of Review and Intent to Revoke

We have determined that changed circumstances exist sufficient to warrant initiation of a changed circumstances review. These changed circumstances include: (1) The Government of Mexico's accession to the GATT; (2) our international obligations requiring us not to levy countervailing duties on duty-free imports from GATT-member countries in the absence of an affirmative injury determination; and (3) the domestic industry's lack of interest in having the ITC conduct a section 332 investigation and, consequently, its lack of interest in maintaining the countervailing duty order on portland hydraulic cement and cement clinker from Mexico. Under these circumstances, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of our changed circumstances administrative review.

Thus, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met. Accordingly, we intend to revoke the countervailing duty order on portland hydraulic cement and cement clinker from Mexico effective August 24, 1986. The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may request a hearing not later than 10 days after the date of publication of this notice and may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case briefs. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due. The Department will publish the final results of review and its decision on revocation, including its analysis of issues raised in any case or rebuttal brief or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR

355.22 (h)(1) and (h)(4) and 355.25 (d)(1), (d)(2) and (d)(3).

Dated: March 5, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-5803 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination; Certain Steel Plate

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination: certain steel plate.

SHORT-SUPPLY REVIEW NUMBER: 40.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a request for a short-supply allowance of 21,097.34 net tons of certain steel plate for the fourth quarter of 1990 under Article 8 of the U.S.-E.C. steel arrangement.

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-4037 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On February 4, 1991, Berg Steel Pipe Corporation ("Berg") submitted an adequate petition requesting a short-supply allowance for 21,097.34 net tons of steel plate, 73.786 to 74.175 inches in width and 0.494 to 0.618 inch in thickness that meets or exceeds American Petroleum Institute specification X-70, to be delivered during the second and third quarters of 1991. This steel plate will be used by Berg to manufacture certain 24-inch diameter pipe. The request was made under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. Berg's petition alleges that no mill in the United States is capable of meeting the required specifications for this plate and that its two potential foreign suppliers for this material do not have sufficient available quota to supply this order. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

Action: On February 4, 1991, the Secretary established an official record on this short-supply request (Case Number 40) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. On February 13, 1991, the Secretary published a notice in the **Federal Register** announcing its review of this request and soliciting comments from interested parties. Comments were required to be received no later than February 20, 1991, and interested parties were invited to file replies to any comments not later than February 25, 1991. In order to determine whether this product could be supplied to Berg during the second and third quarters of 1991, the Secretary sent questionnaires to Bethlehem Steel Corporation ("Bethlehem"), Oregon Steel Mills, and USX Corporation ("USX"), the three potential U.S. producers of this product. The Secretary received questionnaire responses from Bethlehem and USX and one comment to the **Federal Register** notice.

Questionnaire Responses: Bethlehem and USX indicated in their questionnaire responses that they would not be viable suppliers of the subject plate during the second and third quarters of 1991. Bethlehem noted that it would not be able to produce a product to meet the required X-70 steel plate specifications. However, Bethlehem's response also indicated that the original inquiry from Berg for the requested product was 1,024.6 net tons less than the short-supply request. USX indicated that it does not have the capability to produce the noted X-70 grade steel plate at the present time with its current equipment.

On February 25, 1991, Berg submitted comments in response to Bethlehem's statements concerning the discrepancy between the tonnage contained in Berg's original inquiry to Bethlehem and the tonnage contained in Berg's short-supply request. Berg states that it requested short-supply licenses with a five percent allowance because "* * * short supply licenses are based on actual weight while Berg and other steel mills place their orders based on theoretical weight." Berg maintains that because the actual weight of the plate it requires, given the tolerances, could be as much as five percent greater than the theoretical weight, Berg is requesting a short-supply allowance for five percent more tonnage than it will actually order. "The five percent additional is Berg's best estimate of a prudent amount to cover this discrepancy between actual and theoretical weight."

Conclusion: The potential domestic suppliers of X-70 grade steel plate did not indicate an ability to supply this material to Berg during the required time frame. Furthermore, sufficient quota is unavailable to the potential foreign suppliers for this steel plate. Therefore, the Secretary determines that short supply exists with respect to the requested product. Pursuant to section 4(b)(4)(A) of the Act, and section 357.102 of Commerce's Short-Supply Procedures (19 CFR 357.102), the Secretary grants Berg a short-supply allowance for 21,097.34 net tons of the requested plate for the second and third quarters of 1991.

Dated: March 6, 1991

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-5804 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

William Paterson College of New Jersey, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 89-177R. Applicant: William Paterson College of New Jersey, Wayne, NJ 07470. Instrument: Mass Spectrometer, Model JMS-DX303HF. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 54 FR 31721, August 1, 1989. Reasons: The foreign instrument provides FAB ionization and linked scan capabilities with a scan speed of 0.1 seconds per decade. Advice Submitted by: National Institutes of Health, December 18, 1990.

Docket Number: 90-029R. Applicant: University of Vermont, Burlington, VT 05405. Instrument: Mass Spectrometer, Model VG SIRA SERIES II. Manufacturer: VG Isogas, United Kingdom. Intended Use: See notice at 55 FR 9347, March 13, 1990. Reasons: The foreign instrument provides an internal

precision of 0.05% for 3 bar μl samples of CO_2 and a triple Faraday collector. Advice Submitted by: National Institutes of Health, December 18, 1990.

Docket Number: 90–036R. Applicant: Cornell University, Ithaca, NY 14853. Instrument: Mass Spectrometer, Model 252. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 55 FR 9347, March 13, 1990. Reasons: The foreign instrument provides: (1) 5 computer-controlled gas inlet systems, (2) a 6-cup multi-collector array and (3) internal precision to 0.005% for 100 bar μl samples of CO_2. Advice Submitted By: National Instruments of Health, December 18, 1990.

Docket Number: 90–170. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Radiation Detector, Model AB–5 and Accessories. Manufacturer: Pylon Electronic Development Co., Canada. Intended Use: See notice at 55 FR 41737, October 15, 1990.

Docket Number: 90–184. Applicant: Hawaii Institute of Geophysics, Honolulu, HI 96822. Instrument: Two (2) Field Portable Remote Radon Detectors, Model 611 Manufacturer: Alpha Nuclear Corporation, Canada. Intended Use: See notice at 55 FR 47787, November 15, 1990. Reasons. The foreign instrument provides the combination of both. (1) Field and laboratory operation, (2) computer adapted and tape readout and (3) real time and passive measurements. Advice Submitted By: National Institute of Standards and Technology, January 9, 1991

Docket Number: 90–208. Applicant Yale University, New Haven, CT 06520. Instrument Electron Paramagnetic Resonance Spectrometer System, Model ESP 300–10/12. Manufactuer: Bruker Analytische Messtechnik GmbH, West Germany. Intended Use: See notice at 55 FR 51752, December 17, 1990. Reasons. The foreign instrument provides. (1) A 10-inch magnet system with a 12kW power supply, (2) a temperature range of 100–700K and (3) ENDOR capability. Advice Received From. National Institute of Standards and Technology, January 24, 1991

The National Institutes of Health and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to anv of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–5805 Filed 3–11–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will meet on March 18–21, 1991, at the Marriott's Bay Point Resort, 100 Delwood Beach Road, Panama City, FL. Except as noted below, the meetings are open to the public.

Council: The Council will begin its meeting on March 20 at 8:30 a.m., and recess at 5 p.m. The agenda is as follows: (1) from 8:45 a.m., to 3:30 p.m., public testimony on the Red Snapper Regulatory Amendment; (2) from 3:30 p.m., to 5 p.m., discussion of Committee recommendations on the Red Snapper Regulatory Amendment. (3) from 8:30 a.m., to 11:30 a.m., on March 21 continue discussion of Committee recommendations on the Red Snapper Regulatory Amendment; (4) from 1 p.m., to 3 p.m., a closed session (not open to the public) discussion of the AP Selection Committee recommendations; (5) from 3 p.m., to 3:15 p.m., the Budget Committee report; (6) from 3:15 p.m., to 3:30 p.m., the Council Chairmen s meeting report; and (7) reports on Enforcement; on the National Marine Fisheries Service Stock Assessment meeting; and from the Director. Adjournment is scheduled at 4:30 p.m.

Committees. On March 18 at 1 p.m., the Budget Committee and AP Selection Committee will meet in a closed session (not open to the public). The meeting will adjourn at 5 p.m. On March 19 at 8 a.m., the Reef Fish Management Committee will meet and adjourn at 5 p.m.

For more information contact Wayne E. Swingle, Executive Director Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL, telephone: (813) 228–2815.

Dated: March 6, 1991

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–5724 Filed 3–11–91; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION ON MINORITY BUSINESS DEVELOPMENT

[91–N–2]

Hearing

AGENCY: Commission on Minority Business Development.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a public hearing of the United States Commission on Minority Business Development will be held on Thursday, March 28, 1991 in New York, New York. The hearing is open to the public.

The March 28th hearing will convene at 9 a.m. at One Federal Plaza, Ceremonial Court Room.

The public hearing is for the purpose of receiving testimony from public and private sector decision-makers and entrepreneurs, professional exports, corporate leaders and representatives of key interest groups and organizations concerned about minority business development and participation in Federal programs and contracting opportunties.

A meeting of the Commissioners will be held on Wednesday, March 27, 1991 at 26 Federal Plaza, room 328. This meeting is open to the public.

The Commission was established by Public Law 100–656, for purposes of reviewing and assessing Federal programs intended to promote minority business and making recommendations to the President and the Congress for such changes in laws or regulations as may be necessary to further the growth and development of minority businesses.

FOR FURTHER INFORMATION AND TESTIMONY INFORMATION: Contact Connie K. McCracken or Anita Irick at 202–523–0030 at the Commission on Minority Business Development, 750 17th Street NW., suite 300, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Transcripts of hearings will be available for public inspection during regular working hours at The Commission Office approximately 30 days following the hearing.

André M. Carrington,

Executive Director

[FR Doc. 91–5814 Filed 3–11–91 8:45 am]

BILLING CODE 6820–PB–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Survey of Consumer Use of Bicycles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a survey of consumers about use of bicycles. The requested expiration date is December 31, 1991.

For the past several years, bicycles have been associated with a large number of injuries and deaths. Since 1973, the Commission estimates that more than one million injuries have been associated with bicycles annually, and that approximately half of these have been treated in hospital emergency rooms. The Commission estimates further that more than 70 per cent of the injuries associated with bicycles which were treated in emergency rooms were to children younger than 15 years of age.

The National Safety Council estimates that in 1989, bicycles involved in collisions with motor vehicles were associated with approximately 1,000 accidental deaths. The Commission estimates that about 30 per cent of these accident victims were children younger than 15 years of age.

During 1991, the Commission plans to conduct a major study of injuries associated with bicycles. From that study, the Commission will obtain a better understanding of bicycle use patterns, bicycle hazard patterns, and factors that contribute to accidents involving bicycles. This study will give particular attention to accidents associated with bicycles which involve children; accidents which result in head injuries; and the relationship between head injuries and use of bicycle helmets. The Commission will use this information when it considers the appropriate action to be taken, if any, to reduce risks of deaths and injuries associated with bicycles.

One component of the Commission's study of bicycle-related injuries is a survey of bicycle use by consumers. The Commission has developed a proposed survey to obtain information about use of bicycles by consumers. This survey has been designed to gather statistically representative data about bicycle riders, bicycles in use, and bicycle usage patterns. The Commission will use the information obtained from the consumer use survery in conjunction with the results of an investigation of bicycle injuries to determine and quantify risk factors in injuries associated with bicycles.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Bicycle Consumer Exposure survey.

Type of request: Approval of a new plan.

Frequency of collection: One time.

General description of respondents: Persons who ride bicycles; parents and guardians of children who ride bicycles.

Total number of respondents: 1,150.

House per response: 0.25.

Total hours for all respondents: 287.

Comments: Comments about this request for approval of a collection of information should be addressed to Elizabeth Harker, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of this request for approval of a collection of information are available from Francine Schacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: March 6, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-5706 Filed 3-11-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Patent; Planar Doped Barrier Semiconductor Device

AGENCY: U.S. Army Laboratory Command, DOD.

ACTION: Notice of availability.

SUMMARY: This is a Notice Availability of U.S. Patent No. 4,410,902 entitled, "Planar Doped Barrier Semiconductor Device, for non-exclusive, exclusive, or partially exclusive licensing.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000, (908) 534-4112.

SUPPLEMENTARY INFORMATION: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent No. 4,410,902, entitled, "Planar Doped Barrier Semiconductor Device," for non-exclusive, exclusive or partially exclusive licensing. This patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

This patent concerns a majority carrier rectifying barrier semiconductor device housing a planar doped barrier. The device is fabricated in GaAs by an expitaxial growth process which results in an n+-i-p+-i-n+ semiconductor structure wherein an extremely narrow p+ planar doped region is positioned in adjoining regions of nominally undoped (intrinsic) semiconductive material. The narrow widths of the undoped regions and the high densities of the ionized impurities within the space charge region results in rectangular and triangular electric fields and potential barriers, respectively. Independent and continous control of the barrier height and asymmetry of the current versus voltage characteristic is provided through variation of the acceptor charge density and the undoped region widths. Additionally, the capacitance of the device is substantially constant with respect to bias voltage.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, United States Code, the Department of the Army as represented by the U.S. Army, Electronics Technology and Devices Laboratory, wishes to license the above-mentioned United States Patent in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing and selling devices covered by the above-mentioned patent.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-5710 Filed 3-11-91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.136A]

Assistance for Training in the Legal Profession; Invitation for Applications for New Awards for Fiscal Year (FY) 1991.

Purpose of Program: To assist individuals from disadvantaged backgrounds to undertake training for the legal profession.

Eligible Applicants: Public and private agencies and organizations, other than institutions of higher education.

Deadline for Transmittal of Applications: April 10, 1991.

Applications Available: March 12, 1991.

Available Funds: $2,928,000.

Estimated Range of Awards: $100,000–$2,500,000.

Estimated Average Size of Awards: $600,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 651.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in EDGAR in 34 CFR 75.210.

The program regulations in 34 CFR 75.210(c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). An additional five points are added to this criterion for a possible total of 20 points;

Budget and cost effectiveness (34 CFR 75.210(b)(5)). An additional 5 points are added to this criterion for a possible total of 10 points;

Evaluation plan (34 CFR 75.210(b)(6)). An additional 5 points are added to this criterion for a possible total of 10 points.

For Application or Information Contact: Mr. Walter T. Lewis, Program Manager, U.S. Department of Education, Division of Higher Education Incentive Programs, Mail Stop 5251, 400 Maryland Avenue, SW., room 3022, ROB–3, Washington, DC, 20202–5251. Telephone: (202) 708–9393. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

(Catalog of Federal Domestic Assistance Number: 84.136A Assistance for Training in the Legal Profession)

Program Authority: 20 U.S.C. 1134r.

Dated: March 6, 1991.

Leonard L. Haynes III,

Assistant Secretary, for Postsecondary Education.

[FR Doc. 91–5729 Filed 3–11–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Wetlands Notification for Proposed Removal Action at the Feed Materials Production Center, Fernald, OH

AGENCY: Department of Energy.

ACTION: Notice of wetlands involvement and opportunity to comment.

SUMMARY: The U.S. Department of Energy (DOE) proposes a removal action to control the storm water runoff from the Waste Pit Area at the Feed Materials Production Center (FMPC) located near Fernald, Ohio. The removal action is required under a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 120 and 106(a) Consent Agreement between DOE and the U.S. Environmental Protection Agency (EPA). The fundamental objective of the removal action is to protect public health and the environment by controlling the release of storm water runoff with uranium concentrations exceeding the proposed DOE-derived concentration guides for surface water discharge. The proposed action incorporates the separation of drainage areas within the Waste Pit Area, thus isolating contaminated and non-contaminated storm water runoff. The segregation of drainage areas through the diversion of storm water runoff would be achieved through the modification of existing structures and topography, the plugging of existing culverts and ditches, and the creation of fill areas and earthen berms. The proposed action would be carried out in concurrence with the U.S. EPA and the Ohio EPA. The action would be performed in such a manner as to avoid or minimize impacts on the wetlands. In accordance with DOE regulations 10 CFR part 1022, DOE would prepare a wetlands assessment in the Engineering Evaluation/Cost Analysis-Environmental Assessment, which would be available in the Administrative Record. Maps and further information are available from DOE at the address shown below.

DATES: Any comments are due to DOE to the addressee below by March 27, 1991.

ADDRESSES:

Mail Comments to: Jack C. Craig, FMPC Remedial Action Project Director, 7400 Wiley Road, Fernald, Ohio 45030.

Fax comments to: (513) 738–6650.

Leo P. Duffy,

Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 91–5898 Filed 3–8–91; 12:17 pm]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

Metal Casting Industrial Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 stat. 770), notice is hereby given of the following meeting:

Name: Metal Casting Industrial Advisory Board.

Dates and Time: Tuesday, April 2, 1991, 8:30 a.m.–5 p.m., Wednesday, April 3, 1991, 8:30 a.m.–3 p.m.

Location: Department of Energy, Forrestal Building, room 6E–069, 1000 Independence Avenue SW., Washington, DC 20585.

Contact: David M. Pellish, Executive Secretary, Department of Energy, 1000 Independence Avenue, SW., Attn: CE–231, Washington, DC 20585, telephone: 202–586–6436.

Purpose of the Board: To provide guidance and oversight in implementing the selection criteria for proposals for establishing National Metal Casting Research Institutes and operation of a Metal Casting Competitiveness Research Program and to recommend to the Sectetary of Energy a list of Metal Casting Research Priorities.

Tentative Agenda: First Meeting of the Board—Tuesday, April 2, 1991, and Wednesday, April 3, 1991:

- Opening Remarks and Welcome by DOE Officials.
- Discussion of the Board's Statutory Responsibilities.
- Discussion of Related Programs.
- Discussion of the Metal Casting Industry Needs, including energy efficient processes, competitivenes, and environmental issues.
- Discussion of Research Resources and Programs at Universities.
- Discussion of Research Resources and Programs at Non-Academic Facilities.
- Discussion of Research Priorities.
- Other matters requiring Board consideration and Public Comment period.

Public Participation: The meeting is open to the public. The Chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on: March 7, 1991.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 91–5809 Filed 3–11–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[TQ91–6–63–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that on March 1, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Fourth Revised Twelfth Revised Sheet No. 8
Fourth Revised Twelfth Revised Sheet No. 9

Carnegie states that pursuant to section 154.308 of the Commission's regulations and the Commission's Order Nos. 483 and 483–A, it is filing an Out-of-Cycle PGA to reflect an unanticipated reduction in its projected system sales requirements and to track a recent decrease in the sales rates of its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as filed in an Interim PGA by Texas Eastern on February 28, 1991. The revised rates are proposed to become effective March 2, 1991, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ91–5–63–000: a $0.6270 per Dth decrease in the commodity component of its LVWS, LVIS and CDS rate schedules; and a $0.0983 per Dth increase in its Standby Charge Adjustment, from $0.2203 to $0.3186 per Dth. Carnegie does not propose any change to the demand components of its sales rates.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such pleadings should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5734 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[TM91–4–33–000]

El Paso Natural Gas Co.; Tariff Filing

March 6, 1991.

Take notice that on March 1, 1991, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in accordance with sections 21 and 22, Take-or-Pay Buyout and Buydown Cost Recovery, of El Paso Natural Gas Company's ("El Paso") Second Revised Volume No. 1 and First Revised Volume No. 1–A FERC Gas Tariffs, respectively, El Paso tendered for filing and acceptance certain tariff sheets that reflect a revision to the Monthly Direct Charge and Throughput Surcharge.

El Paso states that the filing reflects that no additions have been made to the amount presently being amortized, as set forth in El Paso's filing made February 16, 1990 at Docket No. RP90–81–000. The only adjustments proposed by the filing are being made pursuant to Sections 21.4(d)(iii) and 21.5(c)(iii) contained in its Second Revised Volume No. 1 Tariff which provides for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge for interest calculated on the unrecovered balance of El Paso's buyout and buydown costs. El Paso states that interest is permitted to accrue, with respect to its buyout and buydown costs, commencing on the effective date of the rates including such costs or the date El Paso makes the take-or-pay payments, whichever is later. As a result, the Throughput Surcharge has been changed from a Maximum Rate of $0.2630 per dth to $0.2499 per dth.

El Paso respectfully requested that the tendered tariff sheets be accepted and permitted to become effective on April 1, 1991, which is not less than thirty (30) days after the date of filing.

El Paso states that copies of the filing were served upon all interstate pipeline system sales and transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5735 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[TQ91–3–33–000 and RP86–157–005]

El Paso Natural Gas Co.; Proposed Change in Rates

March 6, 1991.

Take notice that on March 1, 1991, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of:

(i) A Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's FERC Gas Tariff, Second Revised Volume No. 1; and

(ii) Elimination of the Special Liquids Surcharge applicable to El Paso's one-part rate sales customers, except Gas Company of New Mexico, authorized by the Commission's order approving settlement at Docket No. RP86–157–000.

El Paso requests that the tariff sheets tendered be accepted for filing and permitted to become effective April 1, 1991.

El Paso states that it has tendered certain tariff sheets in compliance with its PGA provisions which reflect a decrease of $0.0042 per dth in the gas cost component of El Paso's jurisdictional sales rates as compared to the gas cost component of the rates

placed in effect on January 1, 1991 at Docket Nos. TQ91-2-33-000 and TM91-3-33-000.

El Paso also states that the tendered tariff sheets reflect the elimination of the Special Liquids Surcharge effective April 1, 1991 in accordance with the Commission's order authorizing settlement issued at Docket No. RP86-157-000.

El Paso also respectfully requests waiver of the filing requirement of FERC Form No. 542-PGA as it pertains to deregulated gas under renegotiated contracts which requires pipelines to identify gas purchase transactions by NGPA category and subcategory.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system sales customers and all intersted state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5737 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[RP91-111-000]

North Penn Gas Co.; Tariff Change

March 6, 1991.

Take notice that on March 1, 1991 North Penn Gas Company (North Penn) tendered for filing the following tariff sheets to modify its take-or-pay (TOP) recovery mechanism pursuant to Orders 528 and 528-A:

Fifth Revised Sheet No. 3A—Effective April 1, 1991
Second Revised Sheet No. 15H—Effective April 1, 1991
Third Revised Sheet No. 15H(1)—Effective April 1, 1991
First Revised Sheet No. 15H(1)(a)—Effective April 1, 1991
First Revised Sheet No. 15H(2)
First Revised Sheet No. 15H(3)
Alternate Original Sheet No. 15H(4)
Original Sheet No. 15H(5)(a)
Original Sheet No. 15H(5)(b)
Original Sheet No. 15H(5)(c)
Original Sheet No. 15H(5)(d)
Original Sheet No. 15H(5)(e)
Original Sheet No. 15H(5)(f)
Original Sheet No. 15H(5)(g)
Original Sheet No. 15H(5)(h)
Original Sheet No. 15H(5)(i)
Original Sheet No. 15H(5)(j)

For the same reasons, North Penn proposes to eliminate the following tariff sheets:

North Penn states that the specific method North Penn proposes to recover TOP costs is through a volumetric surcharge applicable to all of North Penn's FERC jurisdictional services.

While North Penn believes that no waivers are necessary for this filing, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective April 1, 1991.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the attached service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5732 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[TQ91-4-59-000]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on March 1, 1991, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volumn No. 1 Tariff) and Original Volume No. 2 (Volumn No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $1.4743 per MMBtu to be effective April 1, 1991, through June 30, 1991. Northern further intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period.

Also the instant filing establishes, when necessary, new Demand rates in compliance with the above referenced PGA rulemaking. Such required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish a new Damend rate component of $3,854 per MMBtu. This rate will be effective April 1, 1991 through June 30, 1991.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5736 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[TM91-6-37-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 6, 1991.

Take notice that on February 28, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Third Revised Sheet No. 13

First Revised Volume No. 1-A

First Revised Sheet No. 202

Original Volume No. 2

Eleventh Revised Sheet No. 2.2 Twenty-Second Revised Sheet No. 2-B

The above tariff sheets were filed to reflect a new Fuel Reimbursement Percentage, based on Northwest's actual fuel use for the prior calendar year. The proposed percentages are 1.54% for mainline and 1.97% for gathering. Northwest has requested an effective date of April 1, 1991 for the tendered sheets.

Northwest states that a copy of this filing is being served on Pacific Interstate Transmission Company, Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5738 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[TQ91-2-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on March 1, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Eighty-Fifth Revised Sheet No. 3-A
Sixty-Second Revised Sheet No. 3-B
Ninth Revised Sheet No. 3-B.1

The proposed effective date of these revised tariff sheets is April 1, 1991.

Panhandle states that these revised tariff sheets filed herewith reflect no change in Panhandle's D1 and D2 demand rates pursuant to Section 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states that it should be noted that by Commission Orders dated June 30, 1989, August 4, 1989 and August 28, 1989 in Docket Nos. PR89-185-000, *et al.* which accepted for filing section 25 (Seasonal Sales Program) of Panhandle's FERC Gas Tariff, Original Volume 1. Section 25.32(a) thereof provides that Panhandle shall re-establish normal PGA procedures in accordance with section 18 of the General Terms and Conditions on April 1, 1991, or earlier. Accordingly, the instant PGA filing reflects the current cost of purchased gas to be included in Panhandle's commodity sales rates. Further, in accordance with § 25.33(a)(ii) of the General Terms and Conditions, Panhandle has reflected a zero Account No. 191 balance and no deferred account surchage in its proposed rates to be effective April 1, 1991.

Panhandle states that the above-reference tariff sheets are being filed in accordance with section 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchased Gas Adjustment Clause) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional rates effective April 1, 1991.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5733 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[RP91-112-000]

Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on March 1, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fourth Revised Sheet No. 327
Second Revised Sheet No. 327A

Texas Eastern states that the purpose of this filing is to allow shippers under Texas Eastern's Rate Schedule IT-1 receiving service pursuant to section 311 of the Natural Gas Policy Act of 1978 to convert to service pursuant to Texas Eastern's blanket transportation certificate issued in Docket No. CP88-136-000. Texas Eastern also requests waiver of the prior notice requirements and the filing fees associated with the initial reports for the new agreements.

The proposed effective date of the tariff sheets listed above in April 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5739 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[TQ91-2-32-000]

Colorado Interstate Gas Co.; Filing

Take notice that on March 1, 1991, Colorado Interstate Gas Company ("CIG") submitted for filing, as part of its Original Volume No. 1 FERC Gas Tariff, six copies of the following proposed tariff sheets:

Sixth Revised First Revised Sheet No. 7.1
Sixth Revised First Revised Sheet No. 7.2
Sixth Revised First Revised Sheet No. 8.1
Sixth Revised First Revised Sheet No. 8.2

The instant purchased gas adjustment ("PGA") filing is made pursuant to § 154.308 of the Commission's Regulations implementing Order 483, *et*

seq. CIG has eliminated producer demand charges ("PDC") from its Demand-1 rates related to the OXY and Marathon contracts, pursuant to the Commission order issued on February 21, 1991 in Docjet Nos. TQ91-1-32-002 *et al.* The tariff rates underlying Sixth Revised First Revised Sheet Nos. 7.1 through 8.2 reflect a 0.03 cent/Mcf increase in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 Rate Schedules, and a 2 cent decrease in the Demand-1 rate that is solely attributable to the eliminate of PDC's for OXY and Marathon. The proposed rats compared with those filed by CIG on January 17, 1991 in Docket No. TQ91-1-32-001, which rates were approved effective January 1, 1991 by Commission letter order issued February 12, 1991.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commisson and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5744 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[TQ91-2-2-000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

March 6, 1991.

Take notice that on March 1, 1991, East Tennessee Natural Gas Company (East Tennessee) submitted for filing ten copies of Fourth Revised Sheet No. 4 (Primary) and Third Revised Sheet No. 4 (Alternate) and Fourth Revised Sheet No. 5 (Primary) and Third Revised Sheet No. 5 (Alternate) to First Revised Volume No. 1 of its FERC Gas Tariff to be effective April 1, 1991:

The purpose of the revisions to Revised Sheet Nos. 4 and 5 is to reflect a Purchased Gas Adjustment (PGA) to East Tennessee's Rates for the quarterly period of April 1991—June 1991 pursuant to § 21.2 of the General Terms and Conditions of East Tennessee's Tariff.

The Current Purchased Gas Cost Rate Adjustments to Sheet Nos. 4 and 5 are <$0.911> per dekatherm (Primary and Alternate). The adjustments to gas ratres are $3.0984 per dekatherm (Primary and Alternate) (purchase WACOG) and $3.1531 per dekatherm (Primary and Alternate) (sales WACOG).

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5743 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[RP91-105-000]

Florida Gas Transmission Co.; Request for Waiver

March 6, 1991.

Take notice that on February 28, 1991, Florida Gas Transmission Company (Florida) filed a request for permanent waiver of § 154.305(b) of the Commission's regulations to permit it to recover through its Purchased Gas Adjustment (PGA) clause on as "as billed" basis producer demand charges paid under purchased gas contracts between Florida and its producer suppliers. Alternatively, Florida requests permanent limited waiver of § 154.305(b)(1) regarding one contract that includes a producer demand charge so it can recover producer demand charges on an as-billed basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5749 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-7-4-000]

Granite State Gas Transmission, Inc.; Changes in Rates

March 6, 1991.

Take notice that on March 1, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5039, filed Fourth Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on March 1, 1991.

According to Granite State, its filing reflects revised projected purchased gas costs for the balance of the first quarter of 1991 for reductions in the cost of purchases of Canadian natural gas from Boundary Gas, Inc. and Shell Canada Limited. Also, it is stated that Granite State's projected purchase costs for spot-market supplies have been made in projected sales. Overall, it is stated that the filing results in reduced rates for Granite State's juridictional sales.

Granite State further states that the revised rates are applicable to its wholesale sales to its affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc.

Granite State states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to itervene or

protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for ublic inspection

Lois D. Cashell,

Secretary.

[FR Doc. 91-5746 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-110-000]

Great Lakes Transmission Limited Partnership; Proposed Changes in F.E.R.C. Gas Tariff

March 6, 1991.

Take notice that Great Lakes Transmission Limited Partnership ("Great Lakes") on March 1, 1991, pursuant to § 154.63(a)(1) of the Regulations of the Federal Energy Regulatory Commission ("Commission") tendered for filing the following tariff sheets to its FERC Gas Tariff proposed to be effective April 1, 1991:

First Revised Volume No. 1

Twenty-Ninth Revised Sheet No. 1
Thirty-Sixth Revised Sheet No. 57(i)
Thirty-Sixth Revised Sheet No. 57(ii)
Fifth Revised Sheet No. 57(iv)
Twenty-Second Revised Sheet No 57(v)

Original Volume No. 2

Thirty-Fifth Revised Sheet No. 1
Original Sheet No. 3-A
Sixteenth Revised Sheet No. 77
Second Revised Sheet No. 78
Third Revised Sheet No. 78-A
Third Revised Sheet No. 79
Ninth Revised Sheet No. 294
Fourth Revised Sheet No. 295
Fourth Revised Sheet No. 437
Second Revised Sheet No. 439
Third Revised Sheet No. 465
Fourth Revised Sheet No. 466
Second Revised Sheet No. 467
First Revised Sheet No. 474
First Revised Sheet No. 475
First Revised Sheet No. 476
Fourth Revised Sheet No. 603
First Revised Sheet No. 604
First Revised Sheet No. 605
Frist Revised Sheet No. 614
First Revised Sheet No. 615
Second Revised Sheet No. 760
First Revised Sheet No. 761
First Revised Sheet No. 771
First Revised Sheet No. 773
Second Revised Sheet No. 866
First Revised Sheet No. 867
First Revised Sheet No. 875
First Revised Sheet No. 876
First Revised Sheet No. 877
Second Revised Sheet No. 906
First Revised Sheet No. 907
First Revised Sheet No. 916
First Revised Sheet No. 917

Great Lakes advises that the primary purpose of this filing is to enable each of Great Lakes' transportaion customers, who desires to directly provide the company use gas needed by Great Lakes to transport such customers gas volumes, the mechanism to do so. The tariff sheets referenced above reflect the changes necessary to reflect this change in the appropriate Rate Schedules of Original Volume No. 2 of Great Lakes FERC Gas Tariff.

Any person desiring to be heard or to any protest said filing should file a Motion to Intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before March 13, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are om file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5730 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[TQ91-2-16-000]

National Fuel Gas Supply Corp; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that on March 1, 1991, National Fuel Gas Supply Corporation ("National") submits for filing Sixth Revised Sheet No. 5 as part of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 1, 1991.

The purpose of this filing is to reflect a quarterly Purchased Gas Adjustment ("PGA"). Sixth Revised Sheet No. 5 results in a 2.58 cents per dekatherm ("Dth") reduction in its commodity gas cost in comparison with National's compliance filing on January 31, 1991, in Docket No. TA91-1-16-004. The revised RQ and CD sales commodity rate of $3.0616 per Dth is based upon a current average cost of purchased gas of $2.8110 per Dth. The tariff sheet also reflects the modification of National's demand and commodity sales rates required by the annual reconciliation of its Account No. 858 costs.

National further states that copies of this filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such motions to intervene or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5748 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-108-000 and TM91-7-37-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 6, 1991.

Take notice that on March 4, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Seventh Revised Sheet No. 10
Alternate Seventh Revised Sheet No. 10
Eighth Revised Sheet No. 10
Alternate Eighth Revised Sheet No. 10
Seventh Revised Sheet No. 11
Alternate Seventh Revised Sheet No. 11
Eighth Revised Sheet No. 11
Alternate Eighth Revised Sheet No. 11
Fourth Revised Sheet No. 13
Fifth Revised Sheet No. 13

First Revised Volume No. 1-A

Fourth Revised Sheet No. 201
Fifth Revised Sheet No. 201

Original Volume No. 2

Twenty-First Revised Sheet No. 2.3
Twenty-Second Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Charge effective April 1, 1991, to reflect (1) interest applicable to January, February and March 1991, and (2) the amortization of principal and interest. Northwest has proposed a one month incremental Commodity SSP Surchage of 12¢ per MMBtu for the thirty day period commencing April 1, 1991, as further explained in the transmittal letter. The proposed Commodity SSP Charges contained in this instant filing are 4.64¢ per MMBtu for the thirty day period commencing April 1, 1991, and 4.52¢ per MMBtu for the two months commencing May 1, 1991

Northwest has filed Sheet Nos. 10 and 11 above, in both the primary and alternate form, consistent with Northwest's annual PGA filing, submitted on January 30, 1991 in Docket No. TA91-1-37-000. The above mentioned primary sheets include a new footnote 2 intended to provide Northwest's customers with notice of a potential future change in Northwest's rates.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 91-5740 Filed 3-11-91 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-41-001]

Paiute Pipeline Co.; Report of Refunds Under Order No. 528

March 6, 1991

Take notice that on February 7, 1991, Paiute Pipeline Company (Paiute) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds under Order No. 528 relating to the flowthrough of direct-billed amounts refunded by Northwest Pipeline Corporation (Northwest) in Docket No. RP90-118-000.

Paiute states that Northwest direct-billed Paiute for take-or-pay costs under a purchase deficiency allocation methodology in a series of Order No. 500 proceedings. Pursuant to its tariff provisions, Paiute states that it, in turn, direct-billed its customers for their proportionate shares. Order No. 528 stayed the authority of pipelines to collect take-or-pay fixed charges based on a purchase deficiency methodology effective December 1, 1990. On December 14, 1990, the Commission issued an order exempting all of Northwest's direct-billed take-or-pay filings from the provisions of Order No. 528 with the exception of its proceeding in Docket No. RP90-118-000. Consequently, Paiute indicates that on January 8, 1991, Northwest tendered to Paiute refunds of previously collected direct-billed amounts refunded by Northwest in Docket No. RP90-118-000.

Paiute further states that on February 5, 1991, it tendered a portion of the refunds from Northwest to its customer CP National Corporation. According to Paiute, it credited the remaining portion to its customer, Southwest Gas Corporation (Southwest), against direct-billed charges Southwest owed to Paiute.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such protests should be filed on or before March 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91-5752 Filed 3-11-91 8:45 am]

BILLING CODE 6717-01-M

[TQ91-2-38-000]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

March 6, 1991

Take notice that on March 1, 1991, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, suite 850, Houston, Texas 77081, filed a Fifth Revised Sheet No. 4C to its FERC Gas Tariff and FERC Form No. 542-PGA pursuant to 18 CFR 154.308.

Ringwood states that copies of the filing were served on Ringwood's jurisdictional customers and interested state agencies.

Ringwood's Quarterly PGA filing reflects an estimated $1.6812 per Mcf cost of gas, a current adjustment of zero per Mcf; a cumulative adjustment of $.1734 per Mcf; a credit surcharge adjustment of $.0012 per Mcf and a total sales rate of $1.9930 per Mcf

And person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary

[FR Doc. 91-5750 Filed 3-11-91, 8:45 am]

BILLING CODE 6717-01-M

[TQ91-3-9-000 and TM91-3-9-000]

Tennessee Gas Pipeline Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

March 6, 1991

Take notice that on March 1, 1991, Tennessee Gas Pipeline Company (Tennessee) filed the following revised tariff sheets to it FERC Gas Tariff to be effective April 1, 1991:

Item A: Third Revised Volume No. 1

Second Revised Sheet No. 20
Second Revised Sheet No. 21
Fourth Revised Sheet No. 22

Item B: Original Volume No. 2

Twenty-Second Revised Sheet No. 5

Twenty-First Revised Sheet No. 6

Tennessee states that the purpose of this filing is to implement a quarterly Purchased Gas Adjustment to Tennessee's Gas Rates (Item A) and certain transportation rate schedules whose fuel rates track the Gas Rate (Item B). Tennessee states that the current Purchased Gas Cost Rate Adjustments consist of a $(.0065) per dekatherm adjustment applicable to the gas component of Tennessee's sales rate and a $.02 per dekatherm adjustment applicable to the Demand D-1 component.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected stated regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5745 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Dockets Nos. RP88-115-000, RP90-104-000 and RP90-192-000]

Texas Gas Transmission Corp.; Informal Settlement Conference

March 6, 1991.

Take notice that an informal settlement conference will be convened in these proceedings on March 25, 1991, at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The conference will continue on March 26, if necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulation (18 CFR 385.214).

For additional information, contact Donald A. Heydt (202) 208-0248 or Joanne Leveque (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5747 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-109-000]

Transwestern Pipeline Co. Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that Transwestern Pipeline Company (Transwestern) on February 28, 1991 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Primary Sheets—Effective May 1, 1991

84th Revised Sheet No. 5
Original Sheet No. 5D(iv)
1st Revised Sheet No. 5E(ii)
48th Revised Sheet No. 6
6th Revised Sheet No. 87
7th Revised Sheet No. 88
7th Revised Sheet No. 89
7th Revised Sheet No. 90
6th Revised Sheet No. 90A
1st Revised Sheet No. 91
Original Sheet No. 92

Alternate Sheets—Effective May 1, 1991

Alternate 84th Revised Sheet No. 5
Alternate 1st Revised Sheet No. 5E(ii)
Alternate 48th Revised Sheet No. 6
Alternate 6th Revised Sheet No. 87
Alternate 7th Revised Sheet No. 88
Alternate 7th Revised Sheet No. 89
Alternate 7th Revised Sheet No. 90
Alternate 6th Revised Sheet No. 90A
Alternate 1st Revised Sheet No. 91
Alternate Original Sheet No. 92

Transwestern states that the above-referenced tariff sheets are being filed by Transwestern to modify its take-or-pay, buy-out and buy-down mechanism ("TCR" mechanism) in order to recover certain take-or-pay, buy-out, buy-down, and contract reformation costs ("Transition Costs") which amounts it paid subsequent to the implementation of its Gas Inventory Charge ("GIC"), which occurred on October 1, 1989, and which do not qualify under the Litigation Exception provision of its tariff. Transwestern is also requesting a waiver of the GTC condition imposed in the orders issued in Docket No. CP88-143-000 inasmuch as Transwestern's abandonment application in Docket No. CP90-2026-000 has not yet been acted upon by the Commission. Further Transwestern agrees to waive its right to assess or collect any GIC during the effectiveness of the proposed recovery herein of TCR Amount Six.

Transwestern states that it has paid additional $3,524,488 in settlement costs ("TCR Amount Six") and is revising certain tariff sheets and requesting authority to begin recovery of all of such amounts under the primary tariff sheets. Transwestern also states that in the event the Commission denies full recovery of such amounts, Transwestern is submitting alternate tariff sheets requesting authority to recover a portion of such amounts. Recovery of these amounts has not yet been allowed by the Commission.

Transwestern respectfully requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.63 of its Regulations, so as to permit the above listed tariff sheets to become effective May 1, 1991.

Transwestern states that copies of the filing were served on its jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with 18 CFR 385.214 or the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must fule a motin to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5741 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-5-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

March 6, 1991.

Take Notice that on March 1, 1991, United Gas Pipe Line Company (United) tendered for filing the following revised tariff sheets with a proposed effective date of April 1, 1991.

Second Revised Volume No. 1

Thirteenth Revised Sheet No. 4
Thirteenth Revised Sheet No. 4A
Thirteenth Revised Sheet No. 4B
Eleventh Revised Sheet No. 4D

Alternate Thirteenth Revised Sheet No. 4
Alternate Thirteenth Revised Sheet No. 4A
Alternate Thirteenth Revised Sheet No. 4B
Alternate Eleventh Revised Sheet No. 4D
Alternate Thirteenth Revised Sheet No. 4I

The above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations to reflect changes in United's purchased gas adjustment as provided in section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

United states that it has filed tariff sheets to reflect an increase of $0.0375 per Mcf to $2.1812 per Mcf in gas commodity costs compared to the proposed gas commodity cost level filed February 15, 1991 in Docket No. TQ91–4–11–00.

In addition, United states it has filed alternate tariff sheets that reflect non-gas cost base tariff rates as filed by United on February 1, 1991 in Docket No. RP91–83 to be effective April 1, 1991. In the event that the rates are accepted to be come effective April 1, 1991 in Docket No. RP91–83, United requests approval of these alternate sheets in conjunction with the gas adjustment included in this filing.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in such accordance with 18 CFR 385.214 of the Commission's regulations. All such petitions or protests should be filed on or before March 13, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5731 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[TQ91–2–35–000]

West Texas Gas, Inc.; Filing

March 6, 1991.

Take notice that on March 1, 1991, West Texas Gas, Inc. ("WTG") filed Twenty-Third Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective April 1, 1991. Twenty-Third Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell.

Secretary.

[FR Doc. 91–5751 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–1–43–000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that Williams Natural Gas Company (WNG) on March 1, 1991, tendered Third Revised Sheet Nos. 6, 6A, and 9 to its FERC Gas Tariff, First Revised Volume No. 1. WNG states that pursuant to the Purchased Gas Adjustment in Article 18 of its FERC Gas Tariff, it proposes to increase its rates effective May 1, 1991, to reflect:

(1) A $.4013 per Dth increase in the Cumulative Adjustment due to an increase in the WNG's projected gas purchase costs.

(2) A $.3125 per Dth increase in the Surcharge Adjustment (to a positive $.5680 per Dth from a positive $.2555 per Dth) to amortize the Deferred Purchased Gas Cost Subaccount Balance.

(3) A $.0128 per DTh increase in the TOP Volumetric Surcharge (to a positive $.0360 per Dth from a positive $.0232).

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5742 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3912–8]

Acid Rain Provisions

AGENCY: Environmetnal Protection Agency.

ACTION: Notice of availability of guidance for Clean Air Act section 405(d)(3), 405(d)(4), and 405(g)(2).

SUMMARY: This notice is to inform the public and affected utility units that EPA has prepared guidance and submittal forms for elections under sections 405(d)(3), 405(d)(4), and 405(g)(2) of the Clean Air Act Amendments of 1990. Section 405(d)(3) provides "bonus" allowances for certain "clean" coal-fired utility units. Section 405(d)(4) provides a different calculation for basic allowance allocations for certain units which are subject to and in compliance with new source performance standards in section 111 of the Clean Air Act. Section 405(g)(2) provides that units listed in Table B may elect to have their basic allowances calculated according to the other applicable equations in section 405(g).

DATES: Units which beleve they are eligible for the elections under sections 405(d)(3), 405(d)(4), and 405(g)(2) and which would elect the applicable bonus allowances or alternate calculation methods must send the appropriate submittal form (or sufficient information as outlined in the submittal form) to EPA by March 31, 1991.

Failure to provide the necessary notification to EPA will result in EPA determining the choice most beneficial to the unit for the purposes of sections 405(d)(4) and 405(g)(2) and most

beneficial to the operating company for the purposes of Section 405(d)(3)(C).

ADDRESSES: Copies of the guidance and submittal forms are available upon request at the following location: U.S. Environmental Protection Agency, Acid Rain Division, ANR-445, 401 M Street, SW., Washington, DC 20460, Attention: Election Forms. Completed forms may be sent to the same location.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, Acid Rain Division, at the above address; telephone (202) 475-9400, (FTS) 475-9400.

SUPPLEMENTARY INFORMATION: Acid rain occurs when sulfur dioxide and nitrogen oxide emission are transformed in the atmosphere and return to earth in rain, fog or snow. Approximately 20 million tons of SO_2 are emitted annually by electric utilities. Acid rain damages lakes, harms forests and buildings, contributes to reduced visibility, and is suspected of damaging health.

The 1990 Clean Air Act Amendments will result in a permanent 10 million ton reduction in sulfur dioxide (SO_2) emissions from 1980 levels. The centerpiece of the acid rain control program is an innovative market approach where emission allowances are transferable, allowing market forces to govern their ultimate use. To be in compliance with the Act, affected sources (mainly electrical utilities) are required to hold an amount of emissiion allowances at least equal to their annual emissions. Existing sources, and some other sources as provided in the Amendments, will receive an initial allowance allocation. If a source reduces its emissions more than required, it will have left-over allowances that it can sell to another source. This would allow the other source to emit more than otherwise allowed while remaining in compliance. Such allowance transactions will achieve total emissions reductions in the most cost-effective way.

The Act is implemented in two phases. Phase I runs from 1995 to 2000 and affects 261 units which are specifically listed in the Act. Phase II begins in 2000 and is permanent. It affects most utility units that emit SO_2. Also, units not explicitly affected by Phase II requirements may opt into the allowance system.

The elections discussed in this notice affect the initial allowance allocations for eligible units that exercise the elections.

To ensure adequate notice to all potentially eligible units, EPA has chosen to provide this notice.

The requirements of the Paperwork Reduction Act are not applicable to the submittal forms because the forms do not go beyond the necessary notification required by the Act. Also, the guidance and submittal forms are, in fact, designed to reduce the level of effort expended by utilities in complying with the Act. Members of EPA's Acid Rain Advisory Committee, which includes utility owners and operators, specifically requested guidance regarding these elections. The submittal of notification to EPA by March 31, 1991 is mandated under the Clean Air Act Amendments of 1990.

Dated: March 5, 1991.

William G. Rosenburg,

Assistant Administrator for Air and Radiation.

[FR Doc. 91-5791 Filed 3-11-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 6, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0282.

Title: Section 94.17, Shared Use of Radio Stations and the Offering of Private Carrier Communications Service.

Action: Extension.

Respondents: State or local governments, businesses or other for-profit (including small businesses) and non-profit institutions.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 300 recordkeepers; .33 hours average burden per recordkeeper; 100 hours total annual burden.

Needs and Uses: Section 94.17 requires licensees to keep in their station records the written agreement they use to share the facilities. Licensee must also keep up-to-date list of station sharers and private carrier subscribers and the basis of their part 94 eligibility. Information is required to be retained in order to assure that the rules on shared use of microwave radio stations and the offering of private carrier microwave communications service are complied with.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5817 Filed 3-11-91; 8:45 am]

BILLING CODE 6712-01-M

[DA 91-270]

Comments Invited on Florida Regional Public Safety Plan Amendment

March 6, 1991.

The Commission has received a proposed amendment to the public safety radio communications plan for Florida (Region 9). Specifically, the Florida Region Committee approved the establishment of licensing benchmarks. The plan will add subsection 4.7 to read as follows:

4.7 Licensing Benchmarks.

Each channel allotment listed in Table III will remain in effect and incontestable for one year from the date of the initial FCC approval of this section. Should future allotments of either initial or additional channels be made, they will remain in effect for one year from the FCC approval date(s) of those allotments. Channels which have not been applied for within their one year period will be re-allotted following a filing window for new or expanded needs. Such re-allotted channels will similarly remain in effect for one year from their FCC approval date. The term "applied for" means submission to the Region Committee for a complete license application meeting the requirements of section 6 of this Plan. Channels applied for and approved by the Region Committee shall be subject to re-allotment if the application is not received by APCO within sixty (60) calendar days after the date of Region Committee approval. For the purposes of this section, replacement of FCC designated channel numbers with alternate channel numbers to improve spectrum efficiency or reduce interference shall not be considered an allotment or re-allotment. An increase or reduction in the number of channels allotted to a jurisdiction shall not affect the benchmark date(s) of original or remaining channels. Channels allotted for the State of Florida Joint Task Force

State Agency Law Enforcement Communications System are exempt from these benchmark requirements.

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, parties may file comments on or before April 15, 1991 and reply comments on or before April 30, 1991. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87-112, Region 9 consists of the State of Florida. General Docket No. 87-112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to General Docket 90-119, Florida—Region 9, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

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[Report No. 1840]

Petitions for Reconsideration of Actions in Rule Making Proceedings

March 7, 1991.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed on or before March 28, 1991. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Reorganization and Deregulation of part 97 of the Rules Governing the Amateur Radio Service. (PR Docket No. 88-139) Number of petitions received: 1.

Subject: Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers. (CC Docket No. 89-624) Number of petitions received: 5.

Subject: Computer III Remand Proceedings. (CC Docket No. 90-368) Number of petitions received: 1.

Subject: Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations. (MM Docket No. 88-140, RM Nos. 5416 & 5472) Number of petitions received: 8.[1]

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5819 Filed 3-11-91; 8:45 am]

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FEDERAL RESERVE SYSTEM

[Docket No. R-0727]

Proposed Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is publishing for comment proposed enhancements to certain Federal Reserve services and proposed new services related to checks not collected through the Federal Reserve. The proposed services are designed to enable paying banks to continue to provide timely cash management information to their corporate customers and to facilitate a paying bank's responsibility to settle for checks presented by private-sector presenting banks. Specifically, the Board requests comment on (1) A proposed presentment point service; (2) proposed Federal Reserve Bank payor bank services that would include checks presented by private-sector presenting banks; (3) enhancements to the Fedwire format to facilitate settlement for checks presented by private-sector presenting banks; and (4) whether the Federal Reserve Banks should offer a new bilateral settlement service. The Board is also providing its analysis of other Federal Reserve Bank services related to checks not collected through the Federal Reserve that were considered but are not being proposed.

DATES: Comments must be submitted on or before June 28, 1991.

ADDRESSES: Comments, which should refer to Docket No. R-0727 may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Street NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to room B-C-223 between 8:45 a.m. and 5:15 p.m. Commenters are encouraged to submit their comments on this proposal separately from any comments they may provide on the proposed amendments to Regulation CC to provide for same-day settlement for checks presented by private-sector banks (Docket R-0723). All comments received at the above address will be included in the public comments file, and may be inspected at room B-1122 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874), Julius F. Oreska, Manager (202/452-3878), Thomas C. Luck, Senior Financial Services Analyst (202/452-3935), or Nalini T. Rogers, Senior Financial Services Analyst (202/452-3801), Division of Reserve Bank Operations and Payment Systems. For the Hearing impaired only: Telecommunication Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

A. Background

The Board has issued for public comment proposed amendments to Regulation CC to provide for same-day settlement by paying banks [1] for checks presented by private-sector presenting banks. (56 FR 4743, February 6, 1991). Under the same-day settlement proposal, a paying bank would be required to settle for checks presented by private-sector presenting banks on the day of presentment, if specified conditions are met. These conditions include an 8 a.m. (local time of the paying bank) presentment deadline for same-day settlement, and that the check be presented at a location of the paying bank designated by the paying bank that is consistent with the check processing region associated with the routing number encoded on the check. Under the proposal, if a bank presents a check in accordance with the time and location requirements for same-day settlement, the paying bank either must settle for the check on the business day it receives the check without charging a presentment fee or must return the check prior to the time for settlement.

[1] Doyle Brewer's 01-10-91 pleading was mistakenly omitted from the listing of petitions for MM Docket No. 88-140 on the "Petitions for Reconsideration" public notice, Report No. 1837-Corrected, released on February 20, 1991. Therefore, the dates for filing oppositions and replies to those petitions are extended to correspond to the due dates for responding to the petitions on this notice.

[1] Regulation CC defines *bank* to include all depository institutions, including commercial banks, savings institutions, and credit unions. A *paying bank* is a bank, by, at, or through which a check is payable and to which it is sent for payment or collection. The Uniform Commercial Code defines *collecting bank* as a bank, other than the paying bank, that handles a check for collection. A *presenting bank* is a bank, other than the paying bank, that presents a check.

The settlement must be in the form of a credit to the presenting bank's account (or the account of a correspondent settlement agent) at a Federal Reserve Bank. Because these rules would be subject to Regulation CC's variation by agreement provision, a paying bank could agree with a presenting bank to accept checks for same-day settlement if the checks are presented by a presentment deadline other than 8 a.m. or at an alternate location (such as an intercept processor). Similarly, a presenting bank may accept settlement in another form agreeable to it.

The Federal Reserve Banks currently provide a variety of services to banks, including check collection and net settlement services. The Federal Reserve assesses fees for its services to the banks using those services. In light of the same-day settlement proposal, the Board is proposing that the Federal Reserve Banks offer enhanced services and certain new services related to checks not collected through the Federal Reserve. These services, which are described in section B, include a presentment point service, new payor bank services to facilitate the paying bank's continued ability to provide timely cash management information to its corporate customers, and enhancements to the Fedwire service to facilitate settlement for checks presented by private-sector presenting banks.

The Board is considering whether the Federal Reserve Banks should offer a new settlement service for banks to settle for checks presented by private-section presenting banks through accounts maintained at the Federal Reserve Banks. Section C describes such a bilateral settlement service. The Board has also considered, and has determined not to propose, whether Federal Reserve Banks should provide transportation and adjustment services related to checks not collected through the Federal Reserve. The Board's analysis is included in section D.

Section E contains an analysis of the competitive impact of the proposed services and of the bilateral settlement service.

B. Proposed New Federal Reserve Services

Presentment Point Service

The Board proposes that the Federal Reserve Banks offer a new service under which a paying bank could designate its local Federal Reserve office as a presentment point for checks presented to the paying bank by a private-sector presenting bank. This new service would allow a private-sector presenting bank, with the agreement of the paying bank, to deliver checks to the paying bank's local Federal Reserve office, for subsequent pick-up by the paying bank. Under this proposed service, presentment of checks would occur at the time the checks are delivered to the Federal Reserve office. Because many banks currently maintain arrangements to transport checks to and from their local Federal Reserve office, and some banks deliver checks directly to multiple Federal Reserve offices, this service may prove convenient and economical for both presenting banks and paying banks.

Under the proposed service, paying banks could agree with presenting banks to designate the paying bank's local Federal Reserve office as an alternate presentment location. The Federal Reserve office would also require agreements with paying banks that are designating the Federal Reserve office as an alternative presentment location and with presenting banks that have agreed with paying banks to present checks at the Federal Reserve office. The paying bank would be required to provide the Federal Reserve office advance notice before presenting banks begin to present checks to the paying bank at the Federal Reserve office, and to provide advance notice to the Federal Reserve of a termination of the agreement. The Federal Reserve would assume no responsibility to determine whether a paying bank using the presentment point service has an agreement with any specific presenting bank to present checks at the Federal Reserve, nor would the Federal Reserve assume any responsibility to determine whether the presenting bank has met the presentment deadline that had been agreed to by the paying bank and the presenting bank. A presenting bank may not have made presentment by delivering checks to a Federal Reserve office as presentment point for a paying bank if the necessary agreements between the presenting bank and the paying bank and between those banks and the Federal Reserve office have not been made.

Under the proposed service, the Federal Reserve office would accept cash letters from presenting banks, time-stamp the incoming deliveries, provide verification of receipt to the delivery agent, physically control the cash letters, and provide copies of the verification of the time of receipt upon pick-up by the paying bank or its designated agent. The service would not include settlement for the checks. Presenting banks would be required to package and label separately all cash letters presented at the Federal Reserve office so as to distinguish them from other checks being deposited for collection through the Federal Reserve. The Federal Reserve office would incur no liability or accountability for the checks other than that associated with its duty to exercise ordinary care while the checks are in the possession of the Federal Reserve office. The Federal Reserve office would not provide transportation of the checks to the paying bank under this service.

The Federal Reserve's fees for this service would reflect the costs to receive and time-stamp the cash letters presented by designated presenting banks, the costs to physically control the checks at the Federal Reserve office until pick-up by the paying bank, and other administrative costs associated with providing this service. The Board proposes that a daily fixed fee, which may vary by Reserve Bank office and is estimated to be in the range of $15 to $25, be charged to the paying bank for the presentment point service. The paying bank would be assessed the fee because it is the bank for which the Federal Reserve office provides the service. The Board is proposing a fixed fee because, within a foreseeable range of activity, it is expected that the costs of providing the service would be predominately fixed rather than variable in nature. If the comments received indicate, or if subsequent experience demonstrates, that the number of presentments varies substantially among paying banks that use this service, the Board may adjust the proposed fee structure to base the fee, in whole or in part, on the number of cash letters handled by the Federal Reserve office for a paying bank.

The Board requests comment on the proposed presentment point service. Specifically, the Board requests commenters to indicate whether a paying bank would find it beneficial to have its local Federal Reserve office act as an alternate presentment site for checks presented by private-sector presenting banks and whether presenting banks would generally agree to deliver such checks to a Federal Reserve office rather than directly to the paying bank. In addition, the Board requests comment on whether a portion of the costs of providing the presentment point service should be recovered through a fee assessed to the presenting bank because this service offers the presenting bank the convenience of a central presentment location.

Supplemental Payor Bank Services

Same-day settlement for checks presented by 8 a.m., as provided under

the proposal, may narrow the processing window for some paying banks' corporate cash management operations. Currently, banks provide certain corporate customers with information regarding the amount of the corporation's check payments that have been presented early enough each day for the corporation to invest surplus balances or borrow additional funds, as necessary, while money markets are still active. The same-day settlement proposal may adversely affect paying banks that currently rely on Federal Reserve payor bank services to provide corporate cash management products because checks presented directly by private-sector presenting banks would not be included in the daily transmission of Federal Reserve payor bank service data.

The Federal Reserve Banks currently offer payor bank services with respect to checks they collect as an option to paying banks. These services, which include account totals, MICR capture, special sort, extended MICR capture, and truncation [2], are offered (1) To accelerate availability, in the case of truncation and extended-MICR capture services, (2) to assist paying banks in assembling payment data to facilitate the provision of corporate cash management services, and (3) to reduce the paying bank's operating costs.

The Board proposes that the Federal Reserve Banks offer supplemental payor bank services under which a paying bank could designate its local Federal Reserve office as a presentment point for checks not collected through the Federal Reserve, or deliver such checks to the Federal Reserve office, which would provide payor bank services with respect to those checks. The Federal Reserve would not be acting as a collecting bank with respect to such checks.

Under the proposed service, a paying bank that wishes to receive payor bank services with respect to checks not collected through the Federal Reserve generally would agree with the presenting bank to designate the paying bank's local Federal Reserve office as its presentment point. The agreement would specify the time by which the presenting bank would be required to present the checks to the Federal Reserve office based on established Federal Reserve deadlines for this service, and that the Federal Reserve would effect settlement for the checks. Delivery of the checks to the Federal Reserve office in accordance with this proposed service would constitute presentment of the checks at the time of delivery.

The paying bank and presenting bank would also agree with the paying bank's Federal Reserve Bank that the Federal Reserve office would accept presentment of checks from designated presenting banks on behalf of the paying bank and provide the payor bank services requested by the paying bank. The paying bank would indemnify the Federal Reserve for any losses incurred in connection with the provision of this service due to the characterization of the Federal Reserve as a collecting bank, notwithstanding the Federal Reserve's disclaimer of that status with respect to providing this service.

The paying bank does not have to designate the Federal Reserve office as a presentment point in order for the paying bank to obtain supplemental payor bank services on checks presented directly to a location of the paying bank. However, checks for which the paying bank desires to obtain supplemental payor bank services would have to be delivered to the Federal Reserve office by the applicable deadline.

The Board anticipates that Federal Reserve offices may offer the service in two forms—regular and premium. Under the regular service, the presenting bank or the paying bank would deliver the checks to the Federal Reserve office, generally by the latest nonpremium deadline established by the Federal Reserve office for the deposit of checks drawn on the paying bank. Presenting banks would be required to package and label separately all cash letters presented at the Federal Reserve office so as to distinguish them from checks being deposited for collection through the Federal Reserve. The Federal Reserve office would intermingle checks received under the regular service with checks being collected through the Federal Reserve that are designated for payor bank services. The checks would be processed and reconciled by the Federal Reserve office. The Federal Reserve office would credit the presenting bank and function adjustments to the presenting bank for exception conditions found during the reconcilement process. Delivery of payor bank service data to the paying bank for the checks collected through the Federal Reserve as well as the checks presented to the paying bank by private-sector presenting banks would be made simultaneously. The paying bank could function adjustments for all of the checks received in such cash letters through the Federal Reserve. If delivery of checks to the paying bank were delayed beyond the 2 p.m. Federal Reserve Bank presentment deadline, the paying bank would still be required to settle for those checks that the Federal Reserve office had handled for supplemental payor bank services because the paying bank would be obligated to settle with the presenting bank for the checks if the presenting bank presents the checks at the Federal Reserve office by the agreed upon time.

Under a premium service, at the option of the paying bank, Federal Reserve offices would accept checks from presenting banks or paying banks at a later presentment deadline. Under this service, the later receipt of the checks would not allow intermingling of the checks with those being collected through the Federal Reserve and separate processing flows at the Federal Reserve office would be required to capture the information necessary to provide payor bank services. In addition, the processing of these checks would not be completed in time to be included in the regular outgoing shipments of checks to the paying bank. Accordingly, under the premium service, the Federal Reserve would assess higher fees and the paying bank would be responsible for arranging transportation to pick-up the checks from the Federal Reserve office after processing (unless safekeeping or delayed delivery services, which are described below, are provided by the Federal Reserve office).

As they do for checks collected through the Federal Reserve, paying banks would authorize the Federal Reserve office to charge their reserve or clearing accounts for the checks presented at the Federal Reserve under the terms of this service. Credit to presenting banks would be functioned by the Federal Reserve in a manner similar to that used today for fine sort and direct send cash letters Where the

[2] The *account totals* service provides paying banks with the dollar total and the number of checks being presented for specific individual accounts, or for a grouping of accounts. The *MICR capture* service provides paying banks, via tape or transmission, the MICR-line data from checks being presented to the paying banks. The *special sort* service provides paying banks with a specified subset of its checks, outsorted and presented separately from the remainder of its checks. The *extended MICR capture* service provides paying banks with MICR-line data from checks presented to the paying banks. Presentment occurs when the data are delivered electronically to the paying bank. The physical checks are retained at the Federal Reserve office to provide return services and are subsequently delivered to the paying bank, usually arriving at the paying bank within four or five days following presentment. The *truncation* service rovides paying banks with MICR-line data from checks presented to paying banks. Presentment occurs when the data are delivered electronically to the paying bank. The physical checks are not delivered to the paying bank, and return and retrieval services are provided.

presenting bank presents checks subject to the supplemental payor bank services at the Federal Reserve office, special cash letter forms and recap sheets, or automated input, would be used by the presenting bank to communicate the expected amount of credit to its local Federal Reserve office. Where the checks subject to supplemental payor bank services are delivered to the Federal Reserve office by the paying bank, that Federal Reserve office would provide the appropriate credit information to the presenting bank's Federal Reserve office to effect timely credit to the presenting bank.

The supplemental payor bank services products would include account total, MICR capture, and special sort services, as well as "delayed delivery" and "safekeeping" services, which would mirror the current extended MICR capture and truncation services, respectively, in all aspects except the timing of presentment. (Presentment under the delayed delivery and safekeeping supplemental payor bank service products would occur when the checks are physically delivered to the Federal Reserve. In contrast, under the extended MICR capture and truncation products, which are offered only with respect to checks collected through the Federal Reserve, presentment is based upon the electronic data transmission to the paying bank.) The timing of implementation of supplemental payor bank services at individual Federal Reserve offices would vary based on demand for the services by local paying banks and current resources in each office.

The proposed price structure for the supplemental payor bank services product would differ from the price structure for payor bank services for checks collected through the Federal Reserve. In addition to the capture and delivery of payor bank data to the paying bank, the supplemental payor bank services would encompass four basic services, i.e., presentment point service (if the checks are delivered to the Federal Reserve office by the presenting bank), settlement service, adjustment service, and transportation service. Both the presenting bank and the paying bank benefit from the supplemental payor bank services. For example, settlement and adjustment services benefit the presenting bank as well as the paying bank. The presenting bank also receives the benefit of a common presentment location. The Board proposes that a portion of the cost of providing supplemental payor bank services generally would be recovered through a fee to the presenting bank, with the majority of the fee for providing the service assessed to the paying bank. The paying bank would be assessed the entire fee for the service if the presenting bank presents the checks directly to the paying bank and the paying bank delivers the checks to the Federal Reserve Bank.

The Federal Reserve's fees would generally be higher for payor bank services under the supplemental payor bank services product than for payor bank services provided with respect to checks collected through the Federal Reserve. The Board estimates that the total fees to the paying bank and the presenting bank for the regular supplemental payor bank services product would be approximately the same as the sum of the fees for providing payor bank services on fine-sort checks collected by the Federal Reserve, plus the fine sort collection fee (which would recover the settlement, transportation and adjustments costs). Under the premium service, because processing the checks in separate payor bank service runs during peak processing hours would be necessary, the costs of providing premium payor bank information would be higher than the regular supplemental payor bank services.

The Board believes supplemental payor bank services would provide paying banks with consolidated and timely delivery of data from checks collected through the Federal Reserve and from checks presented by private-sector presenting banks. The Board anticipates that private-sector presenting banks, in most instances, would agree to deliver checks directly to the Federal Reserve because Federal Reserve offices offer a convenient central location for delivery.

The Board requests comment on the proposed supplemental payor bank services, which would allow the Federal Reserve Banks to provide payor bank services on cash letters presented by private-sector presenting banks. Specifically, the Board requests comment on whether paying banks perceive a need for Federal Reserve payor bank services on checks presented by private-sector presenting banks. In addition, the Board requests comment on the following questions:

1. Do paying banks perceive a benefit in the ability to obtain supplemental payor bank services from the Federal Reserve? In which particular payor bank services, i.e., account totals, delayed delivery, MICR capture, safekeeping, or special sorts, would paying banks be interested?

2. Would presenting banks wish to present checks at the paying bank's Federal Reserve office, even if they had to agree with the paying bank to present the checks earlier than 8 a.m. in order to retain the right to obtain same-day settlement on these checks?

3. Should the entire fee for the supplemental payor bank services be charged to the paying bank, rather than assessing a portion of the fee to the presenting bank?

4. Is there an interest among alternate service providers, including private-sector presenting banks, in offering payor bank services for checks collected outside the Federal Reserve?

Criteria for Evaluating Proposed Changes

All new services or major service enhancements proposed by the Federal Reserve must meet the criteria described in the March 1990 policy statement "The Federal Reserve in the Payments System." These criteria are full cost recovery, clear public benefit, and that the service be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity.

With respect to the criterion requiring full cost recovery, the presentment point service and supplemental payor bank services products would be priced to achieve full recovery of costs over the long run. The second criterion requires that the service yield a clear public benefit. The Board believes that the presentment point service may provide benefits to both presenting banks and paying banks. This proposed service may allow presenting banks to present checks to many paying banks at a central location to which they have existing transportation. The presentment point service may also provide paying banks that do not process their checks at a location of their bank with an alternate convenient presentment location that likely would be acceptable to presenting banks. This service may decrease the transportation resources that would otherwise be necessary for presenting banks to transport checks to paying banks and for paying banks to transport checks to their processing location.

For the supplemental payor bank services, the public benefits include support for effective account management by corporate cash managers. Facilitating cash management through payor bank services on checks presented by private-sector presenting banks allows for more efficient use of corporate funds. In addition, the supplemental payor bank services

would enable paying banks to receive payor bank service transmissions from one source, which may facilitate their internal corporate cash management operations.

The Board also believes that the supplemental payor bank services may meet the criterion that the service be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity. Similar services are not widely offered by the private sector today, given the apparently limited demand by paying banks. Demand is low because some paying banks currently impose barriers to presentment by private-sector presenting banks if such presentments would impede their ability to provide cash management services or otherwise adversely affect their operations. The Board believes that private-sector service providers may be reluctant to offer similar services immediately if a same-day settlement rule were adopted, should significant capital investment be necessary. Without immediate and widespread response from the private sector, a level of service that would allow the product to be available with reasonable effectiveness, scope, and equity may not be available without Federal Reserve participation. The Board requests comment on whether the proposed presentment point service and the proposed supplemental payor bank services meet the criterion that private sector providers alone cannot be expected to provide such services with reasonable effectiveness, scope and equity.

Enhancements to the Fedwire Format To Facilitate Settlement

Under the same-day settlement proposal, the paying bank must settle with the presenting bank for checks presented in accordance with the regulation by credit to an account of the presenting bank at a Federal Reserve Bank or by any other form of settlement to which the presenting bank agrees. For example, settlement for checks could be made by the paying bank transferring funds to the presenting bank through the Fedwire funds transfer service, or by the paying bank and the presenting bank agreeing to settle through accounts maintained at one or both of the banks, or through accounts maintained at a correspondent bank(s). Generally, a fee of $0.50 is assessed to both the originating bank and the receiving bank for a funds transfer through the Fedwire service.

The Board requests comment on whether the existing Fedwire format could be utilized so that banks could identify, on an automated basis, those funds transfers related to settlement for check presentments and associated adjustment activity. Those transfers could then be segregated by the receiving bank for internal processing. The designation of certain Fedwire funds transfers as check settlement or adjustment transfers could be accomplished by establishing a new product code that could be used to differentiate these transfers from other funds transfers.

The details of the check settlement transaction could be conveyed using one of the existing Fedwire structured format fields. For example, the 155 character "bank-to-bank information" field could be designated as the field in which detailed information related to the check settlement transfer would be provided. The paying bank could use the designated field to explain any differences between the transfer amount and the cash letter total. For example, a paying bank could include in the designated field the original cash letter total and the net of all adjustments applied that day to facilitate the presenting bank's reconciliation of the transfer amount. The paying bank could provide reference numbers to identify adjustment activity, so that the presenting bank could associate the payment with supporting documentation sent separately. The paying bank could also use this field to detail individual cash letter totals, if the transfer amount represents settlement for multiple cash letters.

The Fedwire service currently provides a "request for credit transfer" (subtype code 31), which is a nonvalue message that requests the receiver to originate a value transfer to the designated party. This message type may be useful to a presenting bank in notifying a paying bank of the amount of settlement due to the presenting bank. For example, if the checks are presented to a service bureau for processing, the presenting bank may wish to use a request for credit transfer message to notify the paying bank of the amount of the cash letter (although the paying bank has the responsibility to determine the amount of its settlement obligation from its designated agent).

The Board requests comment on whether enhancements to the Fedwire message format would facilitate the use of Fedwire to settle for checks presented by private-sector presenting banks and for associated adjusting entries. The Board also requests the commenters' views on which particular structured third-party field should be designated to convey the detailed information related to the transfer amount. Comments are also requested on other changes to the Fedwire service that would be desirable to facilitate the settlement for checks presented by private-sector presenting banks.

C. Possible New Federal Reserve Service

Bilateral Settlement Service

Some banks have indicated that a bilateral settlement service for making settlement through Federal Reserve accounts for checks presented by private-sector presenting banks would facilitate efficient settlement in a same-day settlement environment. The Board is considering whether the Federal Reserve Banks should offer a new bilateral settlement service for the settlement of checks not collected through the Federal Reserve. The Board is uncertain whether a Federal Reserve bilateral settlement service would be attractive to banks, because alternative settlement vehicles, such as Fedwire, may adequately meet banks' needs. Based on its preliminary analysis of the attributes of a bilateral settlement service, the Board believes that paying banks may find that settlement through Fedwire would provide more control of the timing of payments, and that presenting banks may find such a bilateral settlement service to be cumbersome and costly compared to alternatives that are available. In addition, banks may determine that the risks associated with participating in a bilateral settlement service are unacceptable. The Board, however, is providing the following description of how a Federal Reserve bilateral settlement service might be designed in order to determine whether banks have sufficient interest in its use to warrant development of a new service and to obtain the commenters' views regarding the risks associated with this potential service.

If a Federal Reserve bilateral settlement service were implemented, the paying bank and the presenting bank could authorize the Federal Reserve to settle for checks presented by the presenting bank and for subsequent adjustments by the presenting bank and the paying bank through accounts maintained at the Federal Reserve. Settlement could be made through the accounts of the presenting bank and the paying bank or through the accounts of their correspondent settlement agents. The Board believes that the bilateral settlement service, if adopted, should be an all-electronic service, in which both the presenting bank and paying bank send and receive settlement payments

through an electronic connection to the Federal Reserve. An all-electronic service would provide greater efficiency and control, and would minimize the time needed for communication of data, thus providing more time for participants to review settlement data.

The Board proposes, if it adopts a bilateral settlement service, that there would be two settlement cycles as follows:

	Deadlines (ET)	
	a.m.	p.m.
Input to the Federal Reserve	9:00	2:00
Advise of pending charges	9:30	2:30
Reversals	10:30	3:30
Post entries, or advise of reversal	11:00	4:00

Both settlements and adjustments to prior settlements could be made through the bilateral settlement service.[3] Presenting banks could obtain settlement for checks presented, and presenting banks and paying banks could obtain settlement for adjustments, either at 11 a.m. Eastern Time (ET), or at 4 p.m. ET. The second settlement cycle would allow sufficient time for data to be submitted for checks presented to west coast banks and to accommodate presentments made by agreement after the proposed 8:00 a.m. local time presentment deadline.

The presenting bank initiating the settlement entry or the bank initiating an adjustment entry would transmit payment information to the Federal Reserve by the applicable input deadline.[4] The data would be edited and, where necessary, would be transmitted to the Federal Reserve office serving the receiving bank. The Federal Reserve would make information available to the presenting bank and paying bank pertaining to pending settlement and adjustment entries 30 minutes after the input deadline. A bank may reverse a pending charge to its account if, for example, the checks represented by a settlement entry had not been presented by the specified deadline. The paying bank could also reverse a portion of a pending settlement charge to adjust for a large-dollar error, such as an encoding error or a missing bundle, found in the cash letters being settled. Reversals would have to be made within one hour following the time the banks are advised of the pending charges.

Data concerning reversals would be made available to affected banks at the scheduled posting time, which would be 30 minutes following the reversal deadline. At the scheduled posting time, the banks' accounts at the Federal Reserve would be credited and debited, as applicable, and the entries would be reflected in the account balance monitoring system. Payments would be final at the end of the day.[5] If the bank subject to the charge either reversed the pending charge or the Federal Reserve decided not to post the transaction, the presenting bank and the paying bank would be notified at the scheduled posting time that the transaction had not been posted. A daily summary of settlement charges and credits would be provided to the banks participating in the settlement service.

The bilateral settlement service would not be used to function "as-of"[6] adjustments to correct bank errors resulting from the settlement process. The Board believes that it would be a time-consuming and costly administrative effort for the Federal Reserve to verify that both parties approved the "as-of" adjustment, that the "as-of" adjustment was being made for valid reasons, and that it was being made to the appropriate reserve periods. The Federal Reserve would function "as-of" adjustments to compensate for its errors in functioning settlement service transactions.

The Board requests comment on the number of daily cycles that should be provided in a bilateral settlement service and the optimal time(s) of the cycle(s). Under the proposed same-day settlement amendments to Regulation CC, the paying bank is not obligated to settle for checks until the close of Fedwire. The Board requests comment on whether one cycle late in the day would adequately address the needs of paying banks and presenting banks. The Board also requests comment on whether modifications to the timing and number of settlement cycles should be made if the Board adopts a same-day settlement rule with a requirement that the paying bank settle for checks earlier on the day of presentment. The Board recently proposed amendments to Regulation J (12 CFR part 210) that would require a paying bank to settle for checks presented by a Reserve Bank by a specified time during the day of presentment, shortly after presentment. (56 FR 3047, January 28, 1991) The Board also requested comment, in its recent proposal to amend Regulation CC to provide for same-day settlement, on whether the time by which a paying bank must settle for checks under the same-day settlement rule should conform to the time by which a paying bank must settle for checks with its Federal Reserve Bank under any future Regulation J amendment. Such a regulatory change would not mandate a change to the settlement service, because the settlement service would be used only by the agreement of the presenting bank and paying bank; by agreeing to use the settlement service, the participating banks would be agreeing to accept settlements by a time(s) provided under that service.

All fees for the bilateral settlement service would be paid by the presenting bank. The fee structure would have both a fixed and variable component. A fixed fee would be assessed for each transmission by the presenting bank, except for transmissions consisting solely of adjustment entries or of a reversal of a pending charge. The fixed fee would cover the fixed costs associated with processing the data in the transmission, the amortized software development and maintenance costs, and the costs of handling transmissions of adjustment entries by a paying bank. A per transaction fee would be assessed to cover the costs of functioning each settlement or adjustment entry or of reversing a pending charge. The presenting bank, rather than the paying bank, would pay the per transaction fee for adjustment entries initiated by the paying bank.

The Board estimates that the per transmission fee would be in the range of $5.00 to $10.00, and that the per transaction fee would be approximately $1.00. The relatively high fees projected for the bilateral settlement service, compared to the fees for other Federal Reserve electronic payments services, reflects the anticipated small number of presenting banks from which such costs would be recovered.

[3] The Federal Reserve would not handle the accompanying adjustment documentation. (See discussion in Section D.)

[4] The data elements for entries would consist of the presenting bank's routing number, the paying bank's routing number, the dollar amount of the entry, a transaction code identifying the transaction as a settlement transaction or an adjustment transaction, and optionally, in the case of settlement transactions, the dollar amount of the cash letter, the net amount of any adjustments to prior settlements, and a reference number assigned by the presenting bank. Banks may choose to summarize the settlement for adjustments in one entry to minimize fees, or may choose to make separate entries for each adjustment to provide control.

[5] Finality of settlement does not affect the paying bank's right to return a check or to process a subsequent adjustment to the settlement amount.

[6] "As-of" adjustments are memorandum items that are applied to the cumulative deposit position of a bank to correct the impact of an error. The cumulative deposit position is the base from which required reserves, are calculated. These adjustments affect the amount of a bank's required reserve or clearing balance, but do not directly affect the balance in the account.

Firm cost projections cannot be made at this time because the final system design would be contingent upon an assessment of the public comments received. The estimated fees reflect those that would be assessed if the bilateral settlement service were implemented as described above with relatively few users of the service. The actual per transmission fee could be less if there were a substantial number of users, or could be significantly higher if the number of users is very low. If a high volume of settlement transactions and service users evolves, a fee structure consisting solely of per transaction fees, similar to the Fedwire service, could become feasible. The Board requests comment on the price structure of the proposed bilateral settlement service.

The Board is concerned that a bank participating in the bilateral settlement service described above may incur significant risk due to the ability of another bank to instruct the Federal Reserve to charge its account. While the bank subject to the charge would have some opportunity (i.e., one hour) to instruct the Federal Reserve to reverse the pending charge, this time may not be adequate in all cases. If the bank did not reverse the pending debit to its account, it generally would be able to function an adjustment in a subsequent settlement cycle to recoup the improper charge to its account. Despite this capability, the bank might incur a loss, (1) if the bank receiving the debit adjustment reversed the pending charge, or (2) if the Federal Reserve were unable to post the adjustment due to the failure of the bank receiving the debit adjustment, or because the bank receiving the debit adjustment did not have sufficient funds in its account. The Board requests comment on the risks associated with the bilateral settlement service and whether these risks can be minimized by modifying the design of the proposed service.

In addition to the issues raised above, the Board requests commenters to consider and address the following issues with respect to the bilateral settlement service:

1. Do existing settlement options adequately meet the settlement needs of presenting banks and paying banks? If not, would a bilateral settlement service as described above adequately meet these settlement requirements?

2. Would paying banks and presenting banks use the bilateral settlement service?

3. To what extent would the decision to use, or not use, the bilateral settlement service be based on the fees assessed for the service?

4. Would the service be used for settling adjustment differences? If the bilateral settlement service were used to settle adjustments, how would the participants exchange documentation related to the adjustments?

5. Would additional data elements, other than those described above, be necessary to meet the informational requirements of paying banks and presenting banks?

6. Should a portion of the fees for the bilateral settlement service be assessed to the paying bank, rather than assessing all fees on the presenting bank. If so, how should the fees be allocated between paying banks and presenting banks?

7. How could the bilateral settlement service be modified to make it more attractive to presenting banks and paying banks?

Criteria for evaluating proposed changes.

The bilateral settlement service, if adopted, would be priced to achieve full cost recovery over the long run. The bilateral settlement service generally would yield a number of the same public benefits as settlement via Fedwire. The bilateral settlement service would provide an alternative means of settlement that may encourage direct presentment of checks where such presentments are more efficient than collection through intermediaries. The bilateral settlement service also could yield a public benefit by providing an additional mechanism through which banks could settle for checks through accounts maintained at the Federal Reserve Banks. The use of Federal Reserve accounts for settlement minimizes the correspondent balances banks would otherwise have to maintain in order to settle payment transactions. However, as described above, the bilateral settlement service may impose additional risk on the participants in the service.

The Board believes that the bilateral settlement service meets the criterion that the service be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope and equity. The Federal Reserve currently provides net settlement services for numerous check clearinghouses, and the Fedwire system is an effective vehicle that can be used for settlement of payment transactions between banks. The proposed bilateral settlement service is an alternative to the Fedwire service for banks wishing to use balances maintained at the Federal Reserve Banks to settle for checks not collected through the Federal Reserve. Other service providers currently provide, and are expected to continue to provide, settlement services to banks. However, a large number of banks are unlikely to establish and maintain new accounts at a central depository, in addition to those accounts already maintained at the Federal Reserve, in order to provide the basis for a major new private-sector alternative settlement system.

D. Other Potential Services Evaluated But Not Proposed

The Board evaluated several services that certain banks requested that the Federal Reserve provide in a same-day settlement environment, which it has determined not to propose to adopt.

Conjunctive Business on Federal Reserve Intradistrict (Local) Transportation Networks.

The Board evaluated whether the Federal Reserve Banks should be required to permit couriers hired by the Federal Reserve to seek conjunctive business on all intradistrict transportation routes. Conjunctive business means that the courier could carry goods for other customers on routes on which they transport checks for the Federal Reserve. Currently, Federal Reserve offices allow conjunctive business on nearly 90 percent of the local courier routes that deliver checks to banks in the region served by the Federal Reserve office. On those routes where conjunctive business is not allowed, the Federal Reserve offices have exclusive-use contracts because of the time-critical nature of the route. The preponderance of Federal Reserve contracts permitting conjunctive business indicates that presenting banks should encounter few problems in arranging courier services with private couriers for presentment of checks.

The Board believes that the Federal Reserve Banks currently allow conjunctive business on intradistrict transportation networks when it is operationally feasible and does not jeopardize the expeditious collection of checks by the Federal Reserve. Based on this evaluation, the Board does not propose to change the current policy with respect to the intradistrict transportation networks.

Conjunctive Business on the Federal Reserve's Interdistrict Transportation System (ITS).

The Board evaluated whether the Federal Reserve Banks should allow conjunctive business on the ITS network. The ITS network is currently

an exclusive-use, largely air, delivery system connecting Federal Reserve offices, through a hub-and-spoke arrangement, for the transportation of checks collected by the Federal Reserve as well as other Federal Reserve materials. Close coordination and timing among the various air couriers under contract to the Federal Reserve is essential for the network to operate smoothly.

The Federal Reserve System experimented with conjunctive business on the ITS network during the late 1970s. As a direct result of ITS couriers serving the differing needs of other business clients, the Federal Reserve was unable to obtain reliable delivery of its checks at scheduled times. Delays in delivering checks among Federal Reserve offices caused debit float to rise to high levels.

Because of the difficulties in forecasting accurately the daily level of debit float, management of the Federal Reserve's open market operations was made more difficult.

Based on this past experience, the Federal Reserve prohibited conjunctive business on ITS beginning in 1980 in order to retain control over the network. Because of its many interdependent connections under tight deadlines, the ITS network cannot operate effectively under decentralized decision-making by parties with divided loyalties. In order to ensure the efficiency of its check collection system, the Federal Reserve must retain control over the nightly decisions (e.g., when to hold a plane or instruct it to leave) and the network design decisions (e.g., when to change a scheduled departure time).

The Board believes that the only way to ensure control over the ITS network is to employ couriers that are responsible solely to the Federal Reserve. Based on past experience, and the time-critical nature of the interdistrict check collection system, the Board has concluded that the Federal Reserve Banks should not allow conjunctive business on the ITS network.

Transportation Services

The Board evaluated whether the Federal Reserve Banks should offer a new transportation service, under which banks could pay the Federal Reserve to arrange the delivery of checks to paying banks. Currently, the Federal Reserve Banks arrange transportation of only those checks for which the Federal Reserve is acting as a collecting bank or returning bank.[7] A Federal Reserve Bank assumes certain duties and rights with respect to checks it collects, incurs assets and liabilities on its balance sheet during the collection process, and provides warranties as an indorser of the check. Arranging for transportation, both intradistrict and interdistrict, is a function necessary for the collection of checks deposited with the Federal Reserve Banks. If the Federal Reserve Banks were to introduce a new priced transportation service that was not integrally related to the Federal Reserve's check collection responsibilities, the Federal Reserve Banks could be considered "common carriers," potentially subject to applicable Federal and state regulations.

Private-sector couriers can and do deliver checks for presenting banks and banks generally have adequate access to couriers in their local transportation markets. In addition, some correspondent banks maintain extensive networks to transport checks and other material to and from branches and respondents, which could be used by presenting banks to present checks to paying banks.

The Board has determined that the Federal Reserve Banks should not offer a priced check transportation service.[8] Because of the ready availability of courier services to presenting banks, a transportation service would not meet the criterion that new Federal Reserve services should be ones which other service providers cannot be expected to provide with reasonable effectiveness, scope and equity. On balance, it appears that there would be no clear public benefit if the Federal Reserve Banks were to offer a check transportation service.

Adjustment Service

The Board evaluated whether the Federal Reserve Banks should offer a new priced adjustment service to handle adjustments for checks not collected through the Federal Reserve. Currently, the Reserve Banks handle adjustments only for checks collected or returned through the Federal Reserve.[9] A new adjustment service could be limited to providing a clearinghouse for exchanges of claims for adjustments by paying banks and presenting banks, or the Federal Reserve Banks could play the role of resolving disputes between paying banks and presenting banks.

As a clearinghouse, a Federal Reserve office would receive documentation of an alleged error from one party involved in a presentment of checks, record and edit the documentation, and forward it, via mail or electronic transmission, to the other party involved in the presentment. The second party would respond either by accepting the reported error or by refuting the allegation in writing. The Federal Reserve Bank would serve as an intermediary handler of documentation until the two parties either resolved the issue or sought resolution through some other means outside of the Federal Reserve (e.g., the courts).

In the alternate case, a Federal Reserve office not only would serve as a clearinghouse for adjustment documentation, but also would resolve any dispute between the two parties to the check presentment. This form of an adjustment service raises the issue of whether it is appropriate for the Federal Reserve to make a decision involving a check which the Federal Reserve itself did not handle.

The Board has determined that the Federal Reserve Banks should not offer a priced adjustment service to handle adjustments for checks not collected or returned through the Federal Reserve, or otherwise processed by the Federal Reserve. Other service providers would be able to serve as intermediaries in exchanges of adjustment documentation or as arbiter for check adjustments. Because (1) it appears that there would be no clear public benefit if the Federal Reserve Banks were to offer an adjustments service, and (2) other entities alone could provide this service with reasonable effectiveness, scope, and equity, the Board believes it would be inappropriate, under its criteria for offering new services, for the Federal Reserve Banks to offer an adjustment service.

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[7] One proposed exception is the provision of outgoing transportation from the paying bank's Federal Reserve office to the paying bank for checks not collected through the Federal Reserve for which the Federal Reserve provides payor bank services under the proposed regular supplemental payor bank service. These checks would be intermingled with checks collected through the Federal Reserve that are designated for payor bank services. The Federal Reserve would have to provide transportation for those checks collected through the Federal Reserve in order to fulfill its presentment obligation. It would not be operationally practical for the Federal Reserve to provide regular supplemental payor bank services on all of these checks and provide transportation for only those checks collected through the Federal Reserve.

[8] Cash transportation provided by four Federal Reserve Banks is the sole priced transportation service currently provided by the Federal Reserve. This cash transportation service is offered only with respect to cash for deposit to or withdrawal from a Federal Reserve Bank. The Federal Reserve does not provide cash transportation between private-sector banks.

[9] Under the proposed supplemental payor bank services, the Federal Reserve would also handle adjustments for checks processed by the Federal Reserve in order to provide the payor bank services, even though the checks were not collected through the Federal Reserve.

E. Competitive Impact Analysis

The Board recently formalized its procedures for assessing the competitive impact of changes that have a substantial effect on payments system participants.[10] Under these procedures, the Board assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services and if such effects are due to legal differences or due to a dominant market position deriving from such legal differences. Following are the competitive impact analyses for the proposed new services and for the bilateral settlement service.

Presentment Point Service

The proposed presentment point service would allow a paying bank to designate its local Federal Reserve office as a presentment point for checks presented to the paying bank by a private-sector presenting bank. Because many banks currently maintain arrangements to transport checks to and from their local Federal Reserve office and some banks deliver checks directly to multiple Federal Reserve offices, this service may prove convenient and economical for both presenting banks and paying banks.

It does not appear that private-sector entities that could be designated as presentment points by paying banks would be adversely affected by the proposed Federal Reserve presentment point service. The Federal Reserve's proposed service does not rely on the existence of legal differences between the Federal Reserve Banks and other service providers, nor does it rely on the dominant market position of the Federal Reserve Banks in the provision of check collection services deriving from such legal differences. Typically, a paying bank would designate as its presentment point the location of a data processing firm or a correspondent bank that performs demand deposit accounting for the checks drawn on the paying bank. The Federal Reserve Banks do not provide demand deposit accounting services and do not have any inherent advantages in providing a presentment point service, with the possible exception of the convenience of a location where checks are already delivered and picked up by collecting banks and paying banks.

[10] These procedures are described in the Board's policy statement, "The Federal Reserve in the Payments System," which was revised in March 1990. (55 FR 11648, March 29, 1990)

Supplemental Payor Bank Services

The proposed supplemental payor bank services would allow a paying bank to designate its local Federal Reserve office as a presentment point for checks not collected through the Federal Reserve, or to deliver to its Federal Reserve office checks that it has received directly, and instruct the Federal Reserve office to provide payor bank services with respect to those checks. The Federal Reserve Banks currently offer payor bank services as an option to paying banks for checks collected through the Federal Reserve.

The provision of supplemental payor bank services should not adversely affect the provision of similar services by private-sector providers due to legal differences between the Federal Reserve Banks and other service providers or due to a dominant market market position deriving from such legal differences. Generally, a presenting bank, because it has possession of the checks, would have an advantage in offering timely and cost-effective payor bank services to the paying bank. Thus, the Federal Reserve's market position does not provide an advantage in the provision of the proposed supplemental payor bank services.

Bilateral Settlement Service

The proposed same-day settlement rule requires the paying bank to settle with the presenting bank by credit to an account of the presenting bank at a Federal Reserve Bank. Settlement may also be in any other form to which the presenting bank and the paying bank agree. While other private-sector service providers may offer bilateral settlement services, most banks either hold accounts directly with the Federal Reserve Banks or have established relationships with correspondent banks that have accounts at the Federal Reserve. These accounts serve to maintain reserves and/or to permit participation in Federal Reserve payment services. The current base of accounts, especially the account relationships with all major participants in the payments system, provides the Federal Reserve Banks with an inherent advantage in providing settlement services. Private-sector providers of settlement services would have to hold account relationships with both parties to the settlement. In addition, a presenting bank would be more likely to agree to participate in a bilateral settlement service if the service could be provided with respect to multiple bilateral relationships, increasing the number of account relationships that a private-sector service provider might have to maintain. Attaining these account relationships for the explicit purpose of providing settlement services would likely be difficult.

Thus, a potential private-sector provider of bilateral settlement services would be adversely affected if the Federal Reserve Banks offered a bilateral settlement service. It is unclear, however, whether such adverse effects would be material. Settlement participants may choose to function entries from the Federal Reserve's bilateral settlement service through accounts held at correspondent banks, which are the primary private-sector service providers of settlement services. If this option is chosen by service users, the adverse effects of a bilateral settlement service on private-sector providers might be minimized. The Board requests comment on whether the potential effects of a bilateral settlement service are material.

If the effects are determined to be material, the Board must determine whether the adverse effects are due to legal differences or due to a dominant market position deriving from such legal differences. Because the Federal Reserve has account relationships with most banks in its roles both as central bank and payments system service provider, the adverse effect would be both due to legal differences between the Federal Reserve Banks and private-sector service providers and due to a dominant market position deriving from legal differences.

The objective of a bilateral settlement service would be to provide banks an alternative means of settlement for checks presented by private-sector presenting banks. Provision of an alternate means of settlement should facilitate direct presentments in cases where the direct presentment and the settlement service are less costly or more efficient than collection through intermediaries. The Board believes that provision of a settlement service through Fedwire, and possibly also through a bilateral settlement service, may enhance competition in the provision of check collection services by making it easier for private-sector presenting banks to obtain settlement for checks presented to paying banks. The Board requests comment on whether the provision of a bilateral settlement service, in addition to a Fedwire settlement alternative, would provide greater incentives for direct presentments to occur.

It does not appear that the service can be modified to lessen or eliminate any adverse effect on private-sector providers of settlement services. The

service would allow paying banks and presenting banks to have their entries made through a correspondent settlement agent. Because correspondent banks are the primary private-sector providers of settlement services, the fact that such providers can participate within the context of the service should lessen the potential adverse effects of the proposal. The Board requests comment on whether any other modifications can be made to the service to lessen or eliminate the adverse effect on private-sector providers of settlement services.

By order of the Board of Governors of the Federal Reserve System, March 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5763 Filed 3-11-91; 8:45 am]

BILLING CODE 6210-01-M

Cleo L. Craig Trust, et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 27, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Cleo L. Craig Trust, to acquire 16.34 percent; Cleo L. Craig Grandchildren Trust, C.L. Craig and Michael T. Craig, Trustees, to acquire 83.18 percent of the voting shares of Lawton Securities Bancshares, Inc., Lawton, Oklahoma, and thereby indirectly acquire The Security Bank and Trust Company, Lawton, Oklahoma.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. John G. Sorenson, Jr. and Don C. Ballard, both of Salt Lake City, Utah; to acquire an additional 52.89 percent of the voting shares of Home Credit Corporation, Salt Lake City, Utah, for a total of 80.64 percent, and thereby indirectly acquire Home Credit Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, March 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5764 Filed 3-11-91; 8:45 am]

BILLING CODE 6210-01-F

Johnson International, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 1, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Johnson International, Inc., Racine, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Biltmore Investors Bank, Lake Forest, Illinois, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5766 Filed 3-11-91; 8:45 am]

BILLING CODE 6210-01-F

James T. Rainier and Nancy B. Rainier; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than April 1, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James T. Rainier and Nancy B. Rainier, to increase their ownership of voting shares of Benton Financial Corporation, Fowler, Indiana, by 0.80 percent to a total of 10.14 percent as the result of a stock redemption, and thereby indirectly acquire Fowler State Bank, Fowler, Indiana.

Board of Governors of the Federal Reserve System, March 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5765 Filed 3-11-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Public Buildings Service (PPB), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0060, Building Service Contractor Work Report. This information collection requires guard contractors to submit sign-in, sign-out logs as evidence of the hours that employees have worked.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room

3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden: Respondents: 180; annual responses: 52.0; average hours per response: 0.5000; burden hours: 4680.

FOR FURTHER INFORMATION CONTACT: Jewell D. Wilson, (202) 501–1811.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW, Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: March 1, 1991

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91–5716 Filed 3–11–91; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee; Meetings in April/May

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the months of April/May 1991.

The Extramural Science Advisory Board, NIMH, will discuss infrastructure and Brain Tissue Banks. Attendance by the public will be limited to space available.

The Boards of Scientific Counselors will review, discuss, and evaluate intramural research programs and projects and productivity and performance of individual staff scientists. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Public Law 92–463.

Committee Name: Extramural Science Advisory Board, NIMH.

Date and Time: April 1–2: 8:30 a.m.

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open—April 1–2: 8:30 a.m.–5 p.m.

Contact: Tony Pollitt, room 17C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3175.

Purpose: The committee advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on the direction, scope, balance, and emphasis of the Institute's extramural science programs.

Committee Name: Board of Scientific Counselors, NIMH.

Date and Time: April 8–9: 8:30 a.m.

Place: St. Elizabeths Hospital, NIMH Neuroscience Center, Conference Room 149, 2700 Martin Luther King Avenue, SE., Washington, DC 20032 on April 8.

National Institutes of Health, Building 10, Director's Library, room 4N–224, 9000 Rockville Pike, Bethesda, MD 20892 on April 9.

Status of Meeting: Open—April 8: 8:30 a.m.–9 a.m. Closed—Otherwise.

Contact: Steven M. Paul, National Institutes of Health, Building 10, room 4N–224, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496–3501.

Purpose: The Board provides expert advice to the Director of Intramural Research and the Acting Director, National Institute of Mental Health, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Committee Name: Board of Scientific Counselors, NIDA.

Date and Time: April 30–May 1: 9:30 a.m.

Place: Addiction Research Center, Building C, 2nd Floor Conference Room, 4940 Eastern Avenue, Baltimore, MD 21224.

Status of Meeting: Open—April 30: 9:30 a.m.–10:30 a.m. Closed—Otherwise.

Contact: Brian Butters, Addiction Research Center, P.O. Box 5180, Baltimore, MD 21224, (301) 550–1538.

Purpose: The Board provides expert advice to the Director, National Institute on Drug Abuse, and the Director, Addiction Research Center, on the drug abuse intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, room 10–42, (301) 443–2755; Ms. Joanna Kieffer, NIMH Committee Management Officer, room 9–105, (301) 443–4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: March 7, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–5820 Filed 3–11–91; 8:45 am]

BILLING CODE 4160–20–M

Health Care Financing Administration

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public hearing.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a hearing of the Advisory Council on Social Security.

DATES: The hearing will be open to the public on March 27, 1991 from 10 a.m. to 7 p.m.

ADDRESSES: Sunshine Center, 330 Fifth Street North, St. Petersburg, Florida 33701.

FOR FURTHER INFORMATION CONTACT: Arta Mahboubi, Advisory Council on Social Security, room 638 G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, 202–245–0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every four years. The Council examines issues affecting the Social Security retirement, disability, and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

- Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction effors under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and
- Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeny, and Don C. Wegmiller. The chairperson is Deborah Steelman.

The Council is to report to the Secretary and Congress in 1991.

II. Agenda

The Council will hear testimony on the interim report on Social Security and its relationship to the Federal budget; other aspects of the social security programs; and issues and options related to health care financing reforms; including long term care.

The agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social-Retirement Insurance; 13.805 Social Security-Survivor's Insurance)

Dated: March 6, 1991.

Ann D. LaBelle,

Executive Director, Advisory Council on Social Security.

[FR Doc. 91-5919 Filed 3-11-91; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1991:

Name: HRSA AIDS Advisory Committee.

Time: April 4-5, 1991, 9 a.m.

Place: The Embassy Suites Hotel, 4300 Military Road, Washington, DC.

The meeting is open to the public.

Purpose: The Committee advises the Secretary with respect to health professional education, patient care/health care delivery to HIV-infected individuals, and research relating to transmission, prevention and treatment of HIV infection.

Agenda: Discussions will be held concerning the status of activities being implemented under the Ryan White comprehensive AIDS Resources Emergency (CARE) Act; the status of recommendations made at the Committee's November 1990 meeting, and a presentation that will focus on Women and AIDS.

Anyone requiring information regarding the subject Committee should contact Dr. Samuel C. Matheny, Executive Secretary, HRSA AIDS Advisory Committee, Health Resources and Services Administration, room 14A-21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-4588.

Agenda Items are subject to change as priorities dictate.

Dated: March 7, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-5821 Filed 3-11-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Genome Research Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, March 20-21, 1991, at the Guests Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland. This meeting will be open to the public on March 20th from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 522b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on March 20 from 9 a.m. to adjournment on March 21 for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 604, Bethesda, Maryland 20892, (301) 402-0838, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 93-172, Human Genome Research, National Institutes of Health.)

Dated: March 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-5712 Filed 03-11-91; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute Frederick Cancer Research and Development Center Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Cancer Institute Frederick Cancer Research and Development Center Advisory Committee, April 16-17, 1991, Building 549, Executive Board Room, at the NCI Frederick Cancer Research and Development Center, Frederick, Maryland 21702-1201.

The meeting will be open to the public on April 16 from 8:30 a.m. to approximately 9 a.m. to discuss administrative matters such as future meetings, budget, etc. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on April 16 from approximately 9 a.m to recess and on April 17 from 8:30 a.m. to adjournment for a site visit review of research being conducted by the AIDS Vaccine Program under contract with Program Resources, Inc. There will be a review and evaluation of the report of the previous site visit of the Crystallography Laboratory under contract with Advanced BioScience Laboratories, Inc. Basic Research Program. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, 9000

Rockville Pike, Bethesda, Maryland 20892, tel. (301) 496–5708, will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research and Development Center Advisory Committee, National Cancer Institute Frederick Cancer Research and Development Center, P.O. Box B, Frederick, Maryland 21702–1201, tel. (301) 846–1108, will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: March 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–5713 Filed 3–11–91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Heart Lung and Blood Research Review Committee A; Meeting

Pursuant to Public Law 92–463 notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 28–29, 1991 in Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 28, 1991 from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 522b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 28 from approximately 9 a.m. until recess and from 9 a.m. until adjournment on March 29, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236 will provide a summary of the meeting and a roster of the committee members.

Dr. Robert M. Chasson, Executive Secretary (Acting), Heart, Lung, and Blood Research Review Committee A, Westwood Building, room 552, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7917, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health.)

Dated: March 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–5714 Filed 03–11–91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Heart, Lung, and Blood Research Review Committee B; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 28, 1991 in Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 28 from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 522b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 28 from approximately 10 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236 will provide a summary of the meeting and a roster of the committee members.

Dr. Jeffrey H. Hurst, Executive Secretary, Heart, Lung, and Blood Research Review Committee B, Westwood Building, room 5A–10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4485, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research, National Institutes of Health.)

Dated: March 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–5715 Filed 3–11–91; 8:45 am]

BILLING CODE 4140-01-M

Human Gene Therapy Subcommittee; Meeting; Amendment

Notice is hereby given of an amendment to the notice of meeting published in the **Federal Register** on March 7, 1991. The April 5, 1991, meeting will include discussion of an additional proposed action under the NIH Guidelines for "Research Involving Recombinant DNA Molecules" (51 FR 16958):

VI. Amendment in the "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects/Dr. McIvor

In a letter dated March 4, 1991, Dr. R. Scott McIvor of the University of Minnesota requested an amendment to the "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects" as published in the **Federal Register** (41 FR 7445) to read:

(I.B.2) Preclinical studies, including risk assessment studies. Results demonstrating the safety, efficacy and feasibility of the proposed procedures using the most relevant animal and/or cell culture model systems should be included. Describe the experimental basis (derived from tests in cultured cells and animals) for claims about efficacy and safety of the proposed system for delivery and explain why the model(s) chosen is (are) the most appropriate.

FOR FURTHER INFORMATION: Contact Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496–9838, fax (301) 496–9839.

Dated: March 7, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-5850 Filed 3-11-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-230-08-6310-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1004-0102), Washington, DC 20503, telephone (202) 395-7340.

Title: Road Use Fees Paid Report.

OMB Approval Number: 1004-0102.

Abstract: This form is used to provide information needed to terminate a timber sale contract containing road amortization and road maintenance requirements.

Bureau Form Number: 5400-2 (formerly 5450-8).

Frequency: One for each relevant timber sale contract.

Description of Respondents: Individual, partnership, and corporate timber sale purchasers.

Estimated Completion Time: 15 minutes.

Annual Responses: 100.

Annual Burden Hours: 25.

Bureau Clearance Officer: Gerri Jenkins (202) 653-8853.

Dated: January 23, 1991.

Henry K. Noldan,

Acting Assistant Director for Land and Renewable Resources.

[FR Doc. 91-5758 Filed 3-11-91; 8:45 am]

BILLING CODE 4310-84-M

[AK-966-4230-15; AA-6696-A]

Alaska Native Claims Selection; St. George Tanaq Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue patent under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to St. George Tanaq Corporation for 32.67 acres. The lands involved are on St. George Island, Alaska, in T. 42 S., R. 130 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until April 11, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Mary Jane Piggott,

Chief, Branch of Southwest Adjudication.

[FR Doc. 91-5722 Filed 3-11-91; 8:45 am]

BILLING CODE 4310-JA-M

[CO-920 01-4120-14; COC 51551]

Coal Lease Offering By Sealed Bid; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Rio Blanco County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*

DATES: The lease sale will be held at 2 p.m., Monday, April 15, 1991. Sealed bids must be submitted not later than 1 p.m., Monday, April 15, 1991.

ADDRESSES: The lease sale will be held in the West Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239-3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered

The coal resource to be offered is limited to coal recoverable by underground mining methods in the following lands:

Sixth Principal Meridian

T. 3 N., R. 101 W.,
Sec. 25, S½;
Sec. 26, SE¼SE¼;
Sec. 34, S½NE¼ and N½SE¼;
Sec. 35, NE¼NE¼, S½N½, and N½S½;
Sec. 36, N½ and N½S½.
The land described contains 1360 acres.

Total recoverable reserves are estimated to be 8,724,000 tons. The underground mineable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the B & D seams on an as-received basis is as follows:

	B Seam	D Seam
Btu	9,500 Btu/lb.	10,200 Btu/lb.
Moisture	12.15%	11.27%

	B Seam	D Seam
Sulfur Content	0.39%	0.44%
Ash Content	15.51%	12.19%
Fixed Carbon	41.42%	43.99%
Volatile Matter	30.84%	32.36%

Rental and Royalty:

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR part 206.

Notice of Availability:

Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: March 5, 1991.

Richard D. Tate,

Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 91-5723 Filed 3-11-91; 8:45 am]

BILLING CODE 4310-JB-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (SUN-No. 343X)]

CSX Transportation, Inc; Abandonment Exemption; in Morgan County, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc. (CSXT), of 2.6 miles of rail line between mileposts 3.5 and 6.1, in Morgan County, WV, subject to standard labor protective conditions and to the condition that CSXT must continue to provide service over this line and over its Walker-to-Parkersburg, WV, line until May 1, 1991.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 11, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 22, 1991, petitions to stay must be filed by March 27, 1991, and petitions for reconsideration must be filed by April 8, 1991. Requests for a public use condition must be filed by March 22, 1991.

ADDRESSES: Send pleadings, referring to Docket No. AB-55 (Sub-No. 343X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
and
(2) Petitioner's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721.]

Decided: February 27, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-5806 Filed 3-11-91; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree; Sinclair Oil Corp., et al

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Sinclair Oil Corporation and Sinclair Oil Corporation* v. *Scherer. et al.*, Civil Action Nos. C88-0190-B and C89-0153-B (D. Wy.), is available to the public for review and comment. The consent decree resolves litigation in this matter with respect to Sinclair's Little America Refinery in Evansville, Wyoming in connection with which Sinclair is alleged to have been in violation of section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928. The terms of the decree are summarized in this notice to facilitate public review, and a copy of the decree is being made available at the Department of Justice in Washington, DC, and at the Office of the United States Attorney in Cheyenne, Wyoming at the addresses below. The public is invited to submit comments concerning the decree to the Department of Justice, at the address specified below, until thirty days from the date of this notice.

The decree settles two cases. The first was commenced by Sinclair alleging that the issuance of two administrative orders by the Environmental Protection Agency pursuant to sections 3008 and 7003 of RCRA, 42 U.S.C. 6928 and 7003, was arbitrary and capricious. The second suit was commenced by the United States to secure compliance with one of the two administrative orders. The decree provides that Sinclair will conduct corrective action at the LARCO refinery near Evansville. Corrective action will consist of interim measures to mitigate immediate threats to human health or the environment, a RCRA Facility Investigation, a Corrective Measures Study and Corrective Measures Implementation.

The Department of Justice will receive comments relating to the proposed consent decree until April 11, 1991. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sinclair*, DOJ Ref. No. 90-7-1-486. The draft consent decree may be examined at the office of the United States Attorney, District of Wyoming, 2120 Capitol Avenue, room 2141, Cheyenne, Wyoming 82001. The consent decree may also be examined and obtained in person at the Environmental Enforcement Section Document Center, 1333 "F" Street NW., suite 600, Washington, DC 20004 (Telephone 202-347-7829). A copy of the consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $8.25 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5717 Filed 3-11-91; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action to Enjoin Violation of The Clean Water Act; Euclid, Ohio, et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in

United States v. *The City of Euclid,* Ohio *et al.* (N.D. Ohio), Civil Action No. C83-3855 was lodged with the United States District Court for the Northern District of Ohio on February 22, 1991. The Consent Decree provides for penalties for failure to comply with federal regulations for the discharge of pollutants from wastewater treatment plants owned, operated, and maintained by the City of Euclid, Ohio and requires the defendants to comply with the Clean Water Act, 33 U.S.C. 1251 *et seq.* and all applicable federal and state regulations.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *The City of Euclid, Ohio et al.,* D.O.J. Ref. No. 90-5-1-1-1862.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, Cleveland, Ohio 44114; the Region 5 office of the U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street, suite 600, NW., Washington, D.C. 20004, telephone number (202) 347-2072. In requesting a copy, please enclose a check in the amount of $38.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5718 Filed 3-11-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act Of 1984; National Center For Manufacturing Sciences, Inc.

Notice is hereby given that, Pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. § 4301 *et seq.* ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on February 5, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and describing the status of its research activities. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following company recently was accepted as an Active Member of NCMS:

K.O. Lee Company.

The following companies recently resigned from membership as Active Members in NCMS:

Consilium, Inc.
De Vlieg, Inc.
Haworth, Inc.
S.E. Huffman Corporation
Met-Coil Systems Corporation
Murdock Engineering Company
Newcor Bay City, Division of Newcor, Inc.
Perceptron, Inc.
Scientific Systems Services, Inc.
Sheffield Schaudt Grinding Systems, Inc.

The following organizations recently were accepted as Affiliate Members of NCMS:

Consortium for Laboratory and Industrial Applications of the Macintosh Industrial Technology Institute
Southwest Research Institute

Currently, NCMS has awarded contracts directed toward its objectives in the general areas of manufacturing data and factory control; manufacturing operations; manufacturing processes and materials; production equipment design, analysis, testing, and control; and technology transfer. Other projects directed toward those objectives are under consideration.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the **Federal Register** on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, and November 7, 1990, notices of which the Department published on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22964), August 28, 1990 (55 FR 35194), and December 10, 1990 (55 FR 50786), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-5719 Filed 3-11-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Structural Maintenance for New and Existing Ships; Regents of the University of California, Berkeley

Notice is hereby given that, on February 20, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. (the "Act"), The Regents of the University of California, Berkeley, have filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to a project entitled "Structural Maintenance for New and Existing Ships" (the "Project") and (2) the nature and objectives of the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Project and its general area of planned activities are given below.

The current parties to the Project are American Bureau of Shipping, AMOCO Transport Company, ARCO Marine, Inc., BP Oil Shipping Company (USA), Bureau Veritas, Chevron Shipping Company, Daewoo Shipbuilding and Heavy Machinery, Ltd., Exxon Company International, Ishikawajima-Harima Heavy Industries Co. Ltd., Jurong Shipyard Limited, Lisnave-Estaleiros Navais de Lisboa, Mitsubishi Heavy Industries, Ltd., Mobil Shipping & Transportation Co., and the Ship Structures Committee. Participation in the Project will remain open until December 31, 1991. Additional notices will be filed to disclose all changes in membership of the Project.

The objective of the Project is to attempt to develop engineering procedures and computer programs that will improve the ability to make better decisions on design and repair of ships' internal structural components related to the effects of corrosion and fatigue.

Information regarding participation in the Project may be obtained from The Regents of the University of California, Berkeley, c/o Sponsored Projects Office,

530 Banway Building, Berkeley, CA 94720.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-5720 Filed 3-11-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL COMMISSION ON CHILDREN

Hearing

Background

The National Commission on Children was created by Public Law 100-203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces a Meeting of the National Commission on Children to be held in Charlottesville, Virginia.

Meeting

Time: 8 a.m.–6 p.m., Tuesday, March 26, 1991; 8 a.m.–3:30 p.m., Wednesday, March 27, 1991.

Place: Albemarle Room, Boar's Head Inn, Charlottesville, Virginia.

Status: Open to the public.

Agenda: Commission Meeting.

Contact: Jeannine Atalay, (202) 254–3800.

Dated: March 6, 1991.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 91-5768 Filed 3-11-91; 8:45 am]

BILLING CODE 6820-37-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Archaeometry; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeometry.

Date and Time: March 29, 1991, 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, room 523, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: Closed.

Contact Person: Dr. John E. Yellen, Program Director for Anthropology, room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7804.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Archaeology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: March 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-5772 Filed 3-11-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Engineering; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and Time:

March 28–29, 1991.

9 a.m.–5 p.m.., March 28, 1991 (open).

8 a.m.–9 a.m.., March 29, 1991 (closed).

9 a.m.–12 Noon, March 29, 1991 (open).

Place: National Science Foundation, 1800 G Street, NW., room 540, Washington, DC 20550.

Type of Meeting: Partially closed.

Contact Person: Dr. William S. Butcher, Advisory Committee for Engineering, room 537, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9832.

Minutes: Dr. William S. Butcher at the above address.

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Reason for Closing: The personnel matters being discussed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of U.S.C. 552b(c), the Government in the Sunshine Act.

Agenda:

Thursday, March 28, 1991, room 540, 8 a.m. to 9 a.m.—CLOSED.

Discussion of personnel issues including candidates for vancancies.

Thursday, March 28, 1991, room 540, 9 a.m. to 5 p.m., and Friday, March 29, 1991, room 540, 9 a.m. to 12 Noon—OPEN.

Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

Dated: March 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-5773 Filed 3-11-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Research Initiation and Improvement; Meeting; Amendment

This notice is being amended to include the reason for closing. The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Resarch Initiation and Improvement.

Date and Time:

March 25, 1991: 8:30 a.m.–5:30 p.m.

March 26, 1991: 8:30 a.m.–3:30 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 1242, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Lola E. Rogers, Acting Program Director, VPW, National Science Foundation, room 1225. Telephone: 202/357-7456.

Purpose: Proposal review and discussion.

Agenda: To evaluate and recommend for funding competitive proposals submitted for the FY 1991 VPW competition.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: March 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-5775 Filed 3-11-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee Scientific, Technological, and International Affairs; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee Scientific, Technological, and International Affairs.

Date and Time: Thursday, March 28, 1991; 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 1242, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Marta Cehelsky, Executive Secretary, A/C for STIA, National Science Foundation, (202) 357-7613.

Minutes: May be obtained from contact person listed above after approval by the Chairman.

Purpose of Meeting: Provide advice to STIA Assistant Director.

Agenda: STIA mission statement, STIA Data and Policy Analysis activities, and science and technology in Europe.

Dated: March 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-5774 Filed 3-11-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 60—Disposal of High-Level Radioactive Waste in Geologic Repositories.

3. The form number if applicable: Not applicable.

4. How often the collection is required: The information need only be submitted one time.

5. Who will be required or asked to report: States of Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level waste repository site, or wishing to participate in a license review for a potential repository.

6. An estimate of the number of responses: 8.

7. An estimate of the total number of hours needed annually to complete the requirement or request: An average of 40 hours per response for consultation requests, 80 hours per response for license review participation proposals, and 1 hour per response for statements of representative authority. The total burden for all responses is estimated to be 244 hours.

8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: 10 CFR part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning review of a potential repository site or wish to participate in a license review for a potential repository. Representatives of States or Indian Tribes must submit a statement of their authority to act in such representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0127), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 26th day of February 1991.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 91-5771 Filed 3-11-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-123 Facility Operating License No. R-79 Amdt. No. 9]

University of Missouri-Rolla (University of Missouri-Rolla Research Reactor); Order Modifying License

I

University of Missouri-Rolla (the licensee) is the holder of Facility Operating License No. R-79 (the license) issued on November 11, 1961, and subsequently renewed on April 16, 1985, by the U.S. Nuclear Regulatory Commission (the Commission). The license authorizes operation of the University of Missouri-Rolla Research Reactor (the facility) at a power level of up to 200 kilowatts (kw) thermal (t). The facility is a training reactor located in Rolla, Missouri, and is contained in the Nuclear Reactor Facility, which is located on the east edge of the campus of University of Missouri-Rolla. The mailing address is Nuclear Reactor Facility, University of Missouri-Rolla, Rolla, Missouri 65401-0249.

II

On February 25, 1986, the Commission promulgated a final rule in § 50.64 of title 10 of the Code of Federal Regulations (10 CFR) limiting the use of high-enriched uranium (HEU) fuel in domestic research and test reactors (non-power reactors) (see 51 FR 6514). The rule, which became effective on March 27, 1986, requires that each licensee of a non-power reactor replace HEU fuel at its facility with low-enriched uranium (LEU) fuel acceptable to the Commission (1) unless the Commission has determined that the reactor has a unique purpose and (2) contingent upon Federal Government funding for conversion-related costs. The rule is intended to promote the common defense and security by reducing the risk of theft and diversion of HEU fuel used in non-power reactors and the adverse consequences to public health and safety and the environment from such theft or diversion.

Sections 50.64(b)(2) (i) and (ii) require that a licensee of a non-power reactor (1) not initiate acquisition of additional HEU fuel, if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes that acquisition, and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor, in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Section 50.64(c)(2)(i) of the rule, among other things, requires each licensee of a non-power reactor, authorized to possess and to use HEU fuel, to develop and to submit to the Director of the Office of Nuclear Reactor Regulation (Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal (proposal) for meeting the rule's requirements.

Section 50.64(c)(2)(i) also requires the licensee to include the following in its proposal: (1) A certification that Federal Government funding for conversion is available through the U.S. Department of Energy (DOE) or other appropriate Federal agency and (2) a schedule for conversion, based upon availability of replacement fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for the available financial support, and reactor usage.

Section 50.64(c)(2)(iii) requires the licensee to include in its proposal, to the extent required to effect conversion, all necessary changes to the license, to the facility, and to the licensee's procedures

(all three types of changes hereafter called modifications). This paragraph also requires the licensee to provide supporting safety analyses so as to meet the schedule established for conversion.

Section 50.64(c)(2)(iii) also requires the Director to review the licensee's proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

Section 50.64(c)(3) requires the Director to review the licensee's supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with protection of the public health and safety, any necessary modifications. In the statement of considerations of the final rule, the Commission explained that in most cases, if not all, the enforcement order would be an order to modify the license under 10 CFR 2.204 (see 51 FR 6514).

Section 2.204 provides, among other things, that the Commission may modify a license by issuing an amendment on notice to the licensee that it may demand a hearing with respect to any part or all of the amendment within 20 days from the date of the notice or such longer period as the notice may provide. The amendment will become effective on the expiration of this 20-day-or-longer period. If the licensee requests a hearing during this period, the amendment will become effective on the date specified in an order made after the hearing.

Section 2.714 states the requirements for a person whose interest may be affected by any proceeding to initiate a hearing or to participate as a party.

III

On November 16, 1988, as supplemented on May 8, 1990, May 30, 1990, August 9, 1990 and October 25, 1990, the Director received the licensee's proposal, including its proposed modifications, supporting safety analyses, and schedule for conversion. The conversion consists of replacement of high-enriched with low-enriched uranium fuel elements. The fuel elements contain materials testing reactor (MTR)-type fuel plates, with the fuel meat consisting of uranium silicides dispersed in an aluminum matrix. These plates contain an enrichment of less than 20 percent with the uranium-235 isotope. The Attachment to this Order includes the changes to the licensing conditions and technical specifications that are needed to amend the facility license. The NRC staff has reviewed the licensee's submittals and the requirements of 10 CFR 50.64 and has determined that the public health and safety and the common defense and security require the licensee to convert the facility from the use of HEU to LEU pursuant to the modifications stated in the Attachment in accordance with the schedule included herein following.

IV

Accordingly, pursuant to sections 51, 53, 57, 101, 104, 161b., 161i., and 161o., of the Atomic Energy Act of 1954, as amended, and to the Commission's regulations in 10 CFR 2.204 and § 50.64, it is hereby ordered that:

On the later date of either receipt of LEU fuel elements by the licensee or 30 days following the date of publication of this Order in the **Federal Register** Facility Operating License No. R-79 is modified by amending the license conditions and Technical Specifications as stated in the Attachment to the Order.

V

Pursuant to the Atomic Energy Act of 1954, as amended, the licensee or any other person adversely affected by this Order may request a hearing within 30 days of the date of this Order. Any request for a hearing shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Assistant General Counsel for Hearings and Enforcement at the same address. If a person other than the licensee requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which the person's interest is adversely affected by this Order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission shall issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearings is whether this Order should be sustained.

This Order shall become effective on the later date of either the receipt of LEU fuel elements by the licensee or 30 days following the date of publication of this Order in the **Federal Register** or, if a hearing is requested, on the date specified in an order following further proceedings on this Order.

Dated at Rockville, Maryland this 5th day of March 1991.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5770 Filed 3-11-91; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan Draft Amendments; 1991

AGENCY: Pacific Northwest Power and Conservation Planning Council (Northwest Power Planning Council, Council).

ACTION: Notice of availability of Draft 1991 Power Plan.

SUMMARY: Pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*) (Act), the Council, in April 1983, adopted a Northwest Conservation and Electric Power Plan (Plan). A complete amendment of the Plan was adopted in 1986. Although the Act requires the Council to review the Plan at least every five years, the Council has taken up certain parts of the Plan more frequently, to respond to ongoing changes in the regional energy picture and to incorporate the most recent technology and analysis. The Council amended the Plan again in 1989 by publishing the 1989 Supplement to the 1986 Power Plan, updating the technical data of the Plan.

The Council voted to enter rulemaking on the 1991 revision of the Plan on November 14, 1990. As required by the Act, public hearings have been scheduled in each of the four Northwest states. Close of comment for written comments is 5 p.m., March 15, 1991. The Council will hold consultations through March 22, 1991.

SUPPLEMENTARY INFORMATION: As directed by the Northwest Power Act, the Council developed and adopted a regional conservation and electric power plan shortly after its formation. The Plan includes an energy conservation program, including, but not limited to, model conservation standards; a recommendation for research and development; a methodology for determining quantifiable environmental costs and benefits; a twenty year demand forecast; a forecast of power resources that the Bonneville Power Administration will need to meet its obligations; an analysis of reserve and reserve reliability requirements; and a surcharge methodology. The Plan also includes the Fish and Wildlife Program, developed pursuant to other procedural requirements under the Act.

FOR FURTHER INFORMATION: If you would like a copy of the Draft 1991 Power Plan, please contact Judi Hertz in the Council's Office of Public Information

and Involvement. The Council's address is: 851 SW. 6th Avenue, suite 1100, Portland, Oregon 97204. The Council's telephone numbers are: (503) 222-5161 and (toll free) (800) 222-3355 in Idaho, Montana, and Washington or (800) 452-2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 91-5756 Filed 3-11-91; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28935; International Series Rel. No. 237; File No. SR-AMEX-90-25, Amdt. No. 1]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Listing Options on the EURO TOP-100 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 19, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks to amend its proposed rule filing SR-Amex-90-25 that would permit the trading of options on the Euro Top-100 Index ("E100" or "Index"). The amendment addresses changes to the composition, maintenance and calculation of the Index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The European Options Exchange ("EOE") as proprietor of the Euro-Top 100 Index has made certain changes to the procedures relating to the composition and maintenance of the Index, and calculation of the options settlement price. These changes and their impact on the trading of options on the E100 are discussed below.

Index Composition and Maintenance

The Index continues to measure the collective performance of the most actively traded stocks on the major European stock exchanges in the United Kingdom, France, Germany, Italy, Spain, Belgium, the Netherlands, Switzerland and Sweden. To be eligible for inclusion in the Index, a country must be a European member of the Organization of Economic Cooperation and Development ("OECD") [1]. Furthermore, a country's exchange(s) must now have a total market capitalization of at least 2.5 percent of the aggregate market capitalization of the exchanges in all the countries in the Index.

Each country which meets this criteria is represented in the Index based on its total market capitalization adjusted to reflect its gross national product ("GNP"). A country's base weighting in the Index is 90 percent dependent on its market capitalization and 10 percent dependent on its GNP.

Although the foregoing reflects a change to the index composition and weighting methodology, the countries and their respective weightings continue to remain the same: United Kingdom, 22%; Germany, 15%; France, 15%; Switzerland, 10%; Italy, 10%; The Netherlands, 8%: Sweden, 8%; Spain, 8%: and Belgium, 4%.

Initially, the EOE had planned to review annually, and, if appropriate, revise in April of each year the country base weightings. This annual review was to be based on the newly calculated three year averages of component country GNPs and market capitalizations as of the previous December 31. The EOE now intends to address country selection and weighting biennially. Changes, if appropriate, will be made in April of even numbered years based on the relative capitalizations and GNPs at the end of the previous year, not based on three year averages as had previously been the case. At such time, additional countries which meet the Index eligibility criteria may be added.

Review and revision, if applicable, of component stock selection and stock weighting will continue to occur annually and will continue to be based on three year averages of monetary share volumes of the stocks traded on the primary stock exchange in each component country. The number of such component stocks per country continues to be equal to the country's percentage weighting.

Three year averages of monetary share volumes will also continue to determine the relative weightings in terms of shares of each country's particular component stocks. These volumes will continue to be reviewed annually and revised, if appropriate, in April, based on the three calendar year data. As a result of such annual reviews, the component stocks and the respective number of their shares included in the Index are subject to change.

The Index component stocks represent those stocks in each country which have the highest monetary trading volume over the previous three calendar years. The monetary trading volume (or effective share volume) of a stock is equal to the value (in local currency) of the actual number of shares of stock traded during that three year period. Generally the Index components will represent those stocks with the highest price/volume figures in each country. However, investment company stocks and securities which are not available for investment by foreigners are not eligible for inclusion in the Index. In addition, if more than one class of stock of the same company meets the selection criteria, only the class with the largest effective share volume would be included.

Any revision to the Index due to periodic reviews or adjustments necessitated by corporate actions will not result in a change in Index value greater than one ECU (.01 Index point). The EOE utilizes a procedure for the implementation of any such adjustments as an alternative to changes in index divisors typically used for indexes generated in the U.S. This procedure assures price continuity and index integrity.

Index Calculation

The EOE as the proprietor of the Index has the responsibility for continuously calculating and disseminating Index values. The EOE is presently calculating the Index and disseminating it at five minute intervals to all EOE data vendors, which include

[1] OECD is an organization of the 24 free market democratic countries in North America, Western Europe and the Pacific, formed to promote world trade and the world economy.

Quotron, Reuters and Telekurs. Within the next month, the EOE plans to make it available every 15 seconds. In addition, Bridge Information Service also disseminates the Index value in the United States.

The Index calculation value is based on the last sale price of each component stock in its own currency, reported by the principal stock exchange in its home country, converted into ECUs at the then current effective exchange rate. Currency cross rates will be based on the lowest asked price quoted by the foreign exchange institutions whose quotes are disseminated by Reuters PLC. On an instaneous and continuous basis, each home country currency will first be converted into U.S. dollars and then into ECUs, based on the U.S. dollar/ECU lowest asked price at that moment.

The official E100 Index value will now be calculated from 11 a.m. Central European Time ("CET") to 4:30 p.m. CET (ordinarily 5 a.m. to 10:30 a.m. New York Time). The official Index value calculation begins at the time by which the primary exchanges in each of the Index countries ordinarily commence trading and continues until trading ceases on the primary markets on which more than 50 component stocks trade. However, in the event that 25 or more component stocks do not actually open for trading, an official Index value will not be calculated.

During periods of time in which the official Index value is not being calculated, but component stocks are trading on primary exchanges, the EOE will calculate and disseminate an unofficial Index value. This will occur once one or more primary exchanges begin trading but before all are not open for trading; after those exchanges on which more than 50 component stocks trade are closed; or under other circumstances when some component stocks are open for trading, but the official Index value is not being calculated.

Index values, both official and unofficial, will reflect the last available component stock price converted into ECUs. In the event there is no price change in a component stock, its value will be continuously updated to reflect any changes in the home currency/ECU crossrate.

For the U.S. options market, the Amex will apply a divisor to the EOE calculation for both official and unofficial values and disseminate them via its vendor network during U.S. trading hours. The Amex intends to use separate symbols to identify each of the values. In this way, the Exchange will make available pertinent Index value information without creating investor confusion regarding whether the Index value is official or unofficial.

Settlement Value

On each Expiration Friday, the EOE will calculate and disseminate an official Index settlement value. That value will now be based on the average of the official values for the Index at five minute intervals during the last 30 minutes of trading when all primary exchanges are open. This will ordinarily occur between 12:30 and 1 p.m. CET (6:30 to 7 a.m. New York Time). In the event that a primary exchange is not ordinarily open for trading on Expiration Friday, the settlement value will be calculated on the first preceding day when all primary exchanges are open.

Last Day of Trading

The Exchange proposes to cease trading in expiring options on the trading day prior to Expiration Friday. The Exchange had originally proposed to permit trading on Expiration Friday 10 a.m. New York Time—the time originally fixed by the EOE for determination of a settlement value, to be followed by a closing rotation once the settlement value was announced. Since the settlement value will now be determined and announced prior to the beginning of the Exchange trading day, there is no reason to permit trading in expiring options on Expiration Friday.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believe that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-Amex-90-25 and should be submitted by April 2, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 4, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5726 Filed 3-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28936; File No. SR-BSE-90-19]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Composition of its Audit Committee

On November 21, 1990, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities

and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change to amend Article VII, section 6 of the BSE Constitution. The proposed amendment revises the composition of the BSE's Audit Committee ("Committee").[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 28739 (January 3, 1991), 56 FR 1040 (January 10, 1991). No comments were received on the proposal.

Article VII, Section 6 of the BSE Constitution describes the responsibilities and composition of the Exchange's Audit Committee.[4] The Audit Committee's duties include reviewing and recommending to the BSE Board of Governors ("Board") the selection of independent auditors; reviewing the scope and extent of the auditors' examination, the auditors' procedures, and the results of the independent audit; overseeing the system of internal accounting controls; and supervising investigations into any matter within the scope of its duties.

Article VII, section 6 currently provides that the Audit Committee shall be composed of three persons. Article VII, section 6 also provides that the Chairman of the Board, with the approval of the Board, shall appoint the Audit Committee members at the Board's first meeting following the annual meeting of Exchange members. Article VII, section 6 further provides that the Committee members may be selected from among members of the Board, members of the Exchange, or other qualified persons who do not serve in a management capacity with the Exchange or an Exchange affiliate and who are free of a relationship that, in the opinion of the Board, would interfere with the exercise of independent judgment.

The BSE proposes to increase the number of persons required to compose the Committee from three to four. As amended, article VII, section 6 would provide that the Chairman of the Board, with the approval of the Board, must select the Audit Committee members from among members of the Board, members of the Exchange, or other qualified persons. In addition, article VII, section 6 would specify that those persons who serve on the Audit Committee must not serve in a management capacity with the Exchange or an Exchange affiliate and must be free of any other relationship that, in the opinion of the Board, would interfere with the exercise of independent judgment.

The BSE states that the purpose of the proposed rule change is to revise the composition of the Audit Committee in order to provide that all members of the Committee must be free of a relationship that would interfere with a Committee member's independent judgment. The BSE states that the proposed revisions to the composition of the Committee are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(1) and 6(b)(5) of the Act.[5] Section 6(b)(1) of the Act requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission believes that the proposed revisions to the composition of the Audit Committee are consistent with section 6(b)(1) because the proposal should facilitate Exchange compliance with rule 6a-2 of the Act.[6]

Exchange Act rule 6a-2 requires that a registered national securities exchange file with the Commission annual amendments to its registration statement. More specifically, rule 6a-2(a)(2) requires that an exchange submit to the Commission an audited consolidated financial statement, for the latest fiscal year of the exchange, which is prepared in accordance with generally accepted accounting principles and is covered by a report prepared by an independent public accountant. Rule 6a-2(a)(2) also requires that a registered national securities exchange submit to the Commission an unconsolidated financial statement, for the latest fiscal year, for the exchange, its affiliates, and its subsidiaries.

The Commission believes that the proposed revisions to the composition of the Audit Committee should further the objectives of section 6(b)(1) by enhancing the Exchange's capacity to comply with the financial reporting requirements set forth in rule 6a-2 under the Act. As described above,[7] the Audit Committee's responsibilities include selecting an independent auditor and overseeing the audit. The Commission believes that the revised composition of the Audit Committee should help to ensure that Committee members act impartially in their oversight of the audit process. The Commission believes that this independent oversight should, in turn, facilitate compliance with rule 6a-2, by ensuring that the financial statements submitted to the Commission by the Exchange are audited by a truly independent accountant. Moreover, the Commission believes that because the proposal will allow other qualified persons, *i.e.*, non-members of the Exchange and non-members of the Board, to serve on the Committee, the proposal should contribute to the diversity of experience and expertise as well as the independence of the Committee.

The Commission believes that the proposed amendment is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed, among other things, to protect investors and the public interest, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade. The Commission believes that the proposed amendment should promote the requirements of section 6(b)(5) by providing for an Audit Committee which is composed of impartial Committee members. In contrast to the current standards for Committee membership, the proposed amendment will impose an affirmative requirement that all Committee members must be selected from among members of the Board, members of the Exchange, or other qualified persons who must be free of any relationship with Exchange management or any other relationship that would interfere with the exercise of independent judgment. Moreover, the addition of another member to the Committee should broaden the expertise of the Committee. The revised composition of the Audit Committee, therefore, should increase independence

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] The BSE also submitted to the Commission a nonsubstantive amendment to the proposal, which made minor word changes and clarified the requirements for committee membership. See letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Mary Revell, Branch Chief, Commission, dated December 5, 1990.

[4] The Commission recently approved the BSE's proposal to establish an Audit Committee. See Securities Exchange Act Rel. No. 28191 (July 10, 1990), 55 FR 28969 (July 16, 1990) (File No. SR-BSE-85-3).

[5] 15 U.S.C. 78f (1988).

[6] 17 CFR 240.6a-2 (1990).

[7] *See supra* pages 1-2 for a summary of the Audit Committee's responsibilities.

in the oversight of the Exchange's financial procedures.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: March 4, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5792 Filed 3-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18025; International Series Rel. No. 238; 812-7690]

The Chase Manhattan Bank, N.A.; Application

March 4, 1991

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: The Chase Manhattan Bank, N.A.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from the provisions of section 17(f) thereof.

SUMMARY OF APPLICATION: The Chase Manhattan Bank, N.A. ("Chase") seeks an order exempting any investment company registered under the 1940 Act other than an investment company registered under section 7(d) of the 1940 Act ("Company"), Chase, and Chase AMP Bank Limited ("Chase AMP") from the provisions of section 17(f) of the 1940 Act so as to permit Chase, as the custodian of the securities and other assets of a Company ("Securities"), or as subcustodian of the Securities as to which any other entity is acting as custodian, and such other entity for which Chase so acts, to deposit, or to cause or permit the deposit of, the Securities in Chase AMP in Australia in accordance with the arrangement described below.

FILING DATE: The application was filed on February 25, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 1, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1 Chase Manhattan Plaza, New York, New York 10081.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations:

1. On November 20, 1981, the SEC granted an order (Investment Company Act Release No. 12053) exempting Chase, any subcustodian of Chase, any custodian for which Chase acts as subcustodian, and any Company from the provisions of section 17(f) of the 1940 Act and rule 17f-4 thereunder to the extent necessary to permit Chase, as the custodian of Securities or as the subcustodian of Securities as to which any other entity is acting as custodian, and such other entity for which Chase so acts, to deposit or to cause or permit the deposit of the Securities in foreign banks and foreign securities depositories under certain conditions. On October 9, 1984, the SEC amended the order (Investment Company Act Release No. 14184) so that it would conform to certain conditions in rule 17f-5 which was adopted by the SEC on September 7, 1984 (Investment Company Act Release No. 14132). The order also was amended when the SEC made subsequent changes the rule 17f-5. The order, as amended, is referred to herein as the "Existing Order."

2. Chase AMP is a majority-owned indirect subsidiary of Chase that conducts general trading bank businesses, including loans, retail banking, treasury, corporate finance, and transaction banking activities. Chase AMP's headquarters is in Sydney, New South Wales, Australia, and it is supervised by the Reserve Bank of Australia.

3. The Existing Order requires that a foreign subsidiary of Chase must have shareholders' equity in excess of $100,000,000 to be an eligible foreign custodian. As of December 31, 1989, the shareholders' equity of Chase AMP was $121,676,000 (all figures reflect the then current rate of exchange). As of December 31, 1990, the shareholders' equity of Chase AMP was $82,975,849. Chase made an additional capital contribution to bring the shareholders' equity of Chase AMP to $90,683,849 as of January 2, 1991.

4. The reduction in the shareholders' equity of Chase AMP is the result of exchange rate fluctuations and an increased loan loss reserve. The board of directors of Chase AMP accepted the audited financial statements reflecting the reduction in shareholders' equity on February 12, 1991, and such statements were made public on February 14, 1991.[1]

5. Chase requests that the SEC grant an order permitting it to continue to deposit Securities in Australia with Chase AMP so long as the deposit is made in accordance with an agreement, which agreement would be required to remain in effect at all times during which Chase AMP does not meet the requirements of the Existing Order relating to shareholders' equity, among (a) the Company or a custodian of the Securities of the Company for which Chase acts as subcustodian, (b) Chase, and (c) Chase AMP pursuant to the terms of which Chase would act as the custodian or subcustodian, as the case may be, of the Securities of the Company. Chase AMP would be delegated such duties and obligations of Chase thereunder as would be necessary to permit Chase AMP to hold in custody the Securities of the Company in Australia, provided that such delegation would not relieve Chase of any responsibility to the Company for any loss due to such delegation, except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and other risk of loss (excluding bankruptcy or insolvency of Chase AMP) for which neither Chase nor Chase AMP would be liable under the Existing Order (*e.g.* despite the exercise of reasonable care, loss due to Acts of God, nuclear incident, and the like).

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[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1990).

[1] By letter dated March 1, 1991, counsel for applicant informed the staff of the Division of Investment Management that none of its investment company clients had, for the first time, on or after January 1, 1991, placed funds with applicant for custody in Australia with Chase AMP. In addition, counsel stated that applicant would not permit new investment company deposit accounts to be opened in Australia until the exemptive relief sought by the application is granted.

6. Chase's Existing Order requires that the custody agreements between Chase and any Company will provide that Chase will indemnify and hold a Company whose Securities are held pursuant thereto harmless from and against any loss which shall occur as the result of the failure of a foreign custodian holding the Securities to exercise reasonable care with respect to the safekeeping of the Securities to the same extent that Chase would be required to indemnify and hold the Company harmless if Chase itself were holding the Securities in New York. The indemnity provides financial support to contractual responsibility in addition to that afforded by the shareholders' equity of a foreign bank. The agreements of Chase with respect to Chase AMP will afford protection significantly beyond such indemnification. As set forth in Chase's Existing Order, the Bankers Blanket Bond which Chase currently maintains provides standard fidelity and non-negligent loss coverage with respect to securities which may be held in the offices of Chase's subsidiary banks and the offices of non-affiliated foreign banks which may be utilized as subcustodians by Chase. Chase intends to maintain such coverage so long as it is available at reasonable cost.

7. Under the Existing Order, Chase must warrant to each Company that the established procedures to be followed by each foreign bank holding the Company's Securities, in the opinion of Chase after due inquiry by it, afford protection for the Company's Securities at least equal to that afforded by Chase's established procedures with respect to similar securities held by Chase in New York. Chase, in selecting a subcustodian under the Existing Order, takes into consideration the financial strength of the subcustodian, its general reputation and standing in the country in which it is located, its ability to provide efficiently the custodial services required and the relative costs for the services to be rendered by it.

8. Chase has taken the foregoing factors into consideration in its selection of Chase AMP as subcustodian in Australia. Chase believes that Chase AMP has adequate financial resources to meet its contractual responsibilities as subcustodian of Chase and that it enjoys an excellent reputation in Australia. Chase submits that, as shown by the protections that are provided by the Existing Order and the other qualifications of Chase AMP, the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Condition:

The order requested in the application is conditioned on Chase's compliance with all terms of the Existing Order except those relating to shareholders' equity.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5793 Filed 3-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18026; 812-7566]

National Home Life Assurance Co., et al.; Application for Exemption

March 5, 1991.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: National Home Life Assurance Company ("National Home"), National Home Life Assurance Company Separate Account IV (the "Separate Account") and the Vanguard Variable Insurance Fund (the "Fund").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Separate Account of a mortality and expense risk charge imposed under certain deferred variable annuity contracts called the Vanguard Variable Annuity Plan Contract (the "Contracts").

FILING DATE: The application was filed on July 25, 1990 and amended on February 22, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on March 29, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Applicants, c/o Michael Berenson, Esq., Jorden Schulte & Burchette, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington D.C. 20007.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations:

1. National Home is a stock life insurance company incorporated under the laws of the State of Missouri.

2. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. The Separate Account currently has four subaccounts, each of which invests solely in a corresponding portfolio of the Fund, an open-end diversified investment company.

3. The Fund is a member of the Vanguard Group of Investment Companies ("The Vanguard Group"). The Fund and the other funds in The Vanguard Group obtain at cost virtually all of their corporate management, administrative, shareholder accounting and distribution services through their jointly owned subsidiary, the Vanguard Group, Inc. ("Vanguard"). In Investment Company Act Release No. 11645 (February 25, 1981) ("Release 11645"), the Commission granted the exemptive relief necessary to implement this arrangement.

4. For the cost of administering and maintaining the Contracts there is an annual charge of $25 per Contract plus a charge, assessed daily, equal to an annual rate of .10% of the net asset value of the Separate Account. These charges are guaranteed not to increase for the life of the Contracts and represent reimbursement for only the actual administrative costs expected to be incurred over the life of the Contracts.

Pursuant to the terms of a participation agreement among Vanguard, the Fund and National Home, Vanguard has assumed responsibility for performing National Home's administrative duties under the Contract

and has agreed to assume the expenses of administration. In exchange for its assumption of these duties and expenses, Vanguard will receive the payments discussed in the preceding paragraph which will not exceed the actual costs Vanguard will incur in performing these administrative duties. In the event that Vanguard's administrative duties under the agreement are terminated, the responsibilities assumed by Vanguard would revert to National Home.

5. There is no sales load imposed in connection with sales of Contracts. Vanguard, through its wholly owned subsidiary Vanguard Marketing Corporation, will be the sole distributor of the Contracts and will bear all expenses related to the distribution of such Contracts. As a member of The Vanguard Group, the Fund will participate in the payment of the distribution expenses of The Vanguard Group on the same basis as the other Funds in The Vanguard Group. Pursuant to the Vanguard Modified Formula which is described in the application and in Release 11645, the Fund currently imposes a charge of approximately .04% annually, which will never exceed .20%, to cover its share of the costs of distributing the Vanguard Group of Investment Companies. No part of this fee will be paid to National Home nor will National Home receive any other payments from either Vanguard or the Fund. Also, no payments will be made to Vanguard by National Home in connection with distribution of the Contracts. Other than the fixed annuitization fee described in the application, Vanguard will not receive any payments from National Home.

6. Applicants state that, as a member of The Vanguard Group, the Fund and Contract owners will receive the same benefits received by the other funds in the group. Those benefits are summarized in the application and were discussed in Release No. 11645. Also, according to Applicants, the distribution process with respect to the Contract is analytically virtually identical to that for which relief was granted in Release No. 11645. Vanguard will be the sole distributor of the Contract. Sales of the Contract will result in the sale of Fund shares and Vanguard will receive fees from the Fund for performing distribution services. As is the case with the other funds in The Vanguard Group, these distribution services will be performed internally at cost. Neither the Fund nor Vanguard will pay any external entity for these services. Therefore, Applicants believe that the relief afforded in Release No. 11645 is available in connection with the Fund's payment of distribution fees to Vanguard.

7. The Contract provides for a Mortality and Expense Risk Charge which will be deducted on a daily basis at rates whose annual equivalents and approximate allocation between mortality and expense risks are as follows:

Assets (in millions)	Mortality (percent)	Expense (percent)	Total (percent)
First $250	.270	0.180	0.450
Next $250	.245	.155	.400
Next $250	.220	.130	.350
Next $250	.210	.115	.325
Next $250	.200	.100	.300
Next $250	.190	.085	.275
Over $1,500	.175	.075	.250

This charge is assessed daily and compensates National Home for the mortality and expense risks it assumes under the Contract. National Home guarantees that this charge will never increase.

8. The mortality risk assumed by National Home arises from its obligations to continue to make Annuity Payments under the Contract determined in accordance with the guaranteed annuity tables and other provisions of the Contract, regardless of how long each annuitant lives and regardless of how long all payees as a group live. National Home also assumes a mortality risk as a result of its guarantee of a minimum payment in the event the Annuitant dies prior to the Annuity Date. In addition, National Home assumes a risk that the charges for the administrative expenses may be insufficient to cover the actual cost incurred by National Home for providing Contract administrative services which it is ultimately responsible for, although initially, Vanguard has assumed responsibility for providing those services. If the charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will fall on National Home. Conversely, if the charge proves more than sufficient, the excess will be added to the surplus of National Home. Any surplus resulting to National Home from the mortality and expense charge can be used by National Home, at its discretion, for any business purpose.

9. National Home and the Separate Account represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charges under comparable variable annuity contracts currently being offered in the insurance industry taking into consideration such factors as current charge levels, the manner in which they are imposed, the presence of charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, National Home and the Separate Account further represent that the mortality and expense risk charge under the Contract is within the range of industry practice for comparable contracts. National Home and the Separate Account represent that they will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

10. National Home has concluded that there is a reasonable likelihood that the distribution financing arrangements of the Separate Account will benefit the Separate Account and the Contract owners. National Home will maintain and make available to the Commission on request a memorandum setting forth the basis for this representation. National Home and the Separate Account further represent that the Separate Account will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any fund, formulate and approve any plan under rule 12b-1 of the 1940 Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5794 Filed 3-11-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB to review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission

DATES: Comments should be submitted on or before April 11, 1991. If you intend to comment but cannot prepare

comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth Zaic, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Application for Business Loan SBA Forms 4, 4–I, 4 sch A, 4 short, 4 Ex short.

Frequency: On occasion.

Description of Respondents: Applicants for an SBA Business Loan.

Annual Responses: 28,000.

Annual Burden: 554,325.

Title: SBI Counseling Evaluation.

Form No.: SBA Temp Form 1434.

Frequency: On occasion.

Description of Respondents: Recepients of Small Business Institute Counseling.

Annual Responses: 2,400.

Annual Burden: 800.

Elizabeth Zaic,

Deputy Director, Office of Administrative Services.

[FR Doc. 91–5812 Filed 3–11–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1361]

Revocation of the Restriction on the Use of United States Passports for Travel To, In, or Through Kuwait

Pursuant to the authority of section 211a of title 22 of the United States Code, Executive Order 11295 (31 FR 10603), and in accordance with § 51.73(c) of Title 22 of the Code of Federal Regulations, the passport restriction invalidating United States passports for travel to, in, or through Kuwait is hereby revoked.

While this action is being taken because armed hostilities have ceased in Kuwait, certain potential health and safety dangers will continue to exist.

The Public Notice shall be effective upon publication in the **Federal Register.**

Dated: March 6, 1991.

James A. Baker III,

Secretary of State.

[FR Doc. 91–5932 Filed 3–11–91; 8:45 am]

BILLING CODE 4710–06–M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Implementation of the Accelerated Tariff Elimination

AGENCY: Office of the U.S. Trade Representative.

ACTION: Clarification of articles under consideration for negotiations with the Canadian Government for accelerated tariff elimination.

SUMMARY: Section 210(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to consultation and layover requirements of section 103 of that Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States and Canada under FTA Article 401(5). A notice of articles under consideration for accelerated tariff elimination was published in the **Federal Register** of October 5, 1990. This notice is intended to clarify the tariff classification of certain products which were referred to in the notice of October 5, 1990.

DATE: Public comments are due by March 14, 1991.

Additional Information: Further information on this subject may be found in the **Federal Register** notice of October 5, 1990, Volume 55, Number 194, at pages 40964 through 40973. Inquiries regarding this notice or relating to the implementation of accelerated tariff elimination under the FTA should be directed to James H. Grossman, Director of Tariff Negotiations, Office of North American Affairs, Office of the U.S. Trade Representative, Room 501, 600 17th Street, NW., Washington, DC. 20506, telephone (202) 395–5663.

Requests for Comments: Comments supporting or opposing accelerated U.S. or Canadian duty elimination on articles specified in this notice will be accepted until March 14, 1991. Comments should by type-written and submitted in ten copies to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Room 517, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. Until further notice, no packages will be accepted for delivery at the USTR Building. All packages should be delivered to the New Executive Office Building, 725 17th Street, NW., room G–1. Business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, Washington, DC. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Advice of the United States International Trade Commission: The United States International Trade Commission has provided its judgement as to the probable economic effect of accelerated elimination of United States duties on industries producing products like or directly competitive with the products specified in this notice.

Advice of the Private Sector Advisory Committees: Pursuant to section 103(a)(1) of the FTA Implementation Act, private sector advisory committees have provided their advice on the products specified in this notice.

Clarification of Articles Under Consideration in Negotiations: The **Federal Register** notice of October 5, 1990, listed in Annex I to that notice the subheadings of the Harmonized Tariff Schedule of the United States (HTS) that might be subject negotiations with Canada for accelerated duty elimination. For subheadings listed in Annexes I with an asterisk, only certain specified products covered by the subheadings would be considered for accelerated tariff elimination. A list of the specific products which would be considered was available upon request to the Office of the U.S. Trade Representative. Subsequent to the publication of that notice, in the course of discussions with the Government of Canada and in work by the U.S. International Trade Commission and the U.S. Customs Service, it was determined that certain of the specific products named in the supplemental list to Annex I were not properly classified in the indicated tariff subheadings listed in Annex I, and that those products were properly classified in tariff subheadings which were not included in Annex I.

In order to clarify the intention of the notice of October 5, 1990, that the specified products would be considered for accelerated tariff removal, such products are listed below with the tariff subheading in which they are properly classified.

HTS subheading	Article
2930.90.20	2-Aminothiophenol.
2933.10.37 or 2933.90.39	Benzotriazol-yloxtris (dimethylamino) 2-(lH-benzotriazol-1-yl)-1,1,3,3-tetramethyl uronium hexafluorophosphate/ 2-(lH-benzotriazol-1-yl)-1,1,3,3-tetramethyl uronium tetrafluoroborate.
4411.19	Prefinished and primed (hardboard) sidings in 16 ft. panels or 4 ft. x 8 ft. sheets.

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

[FR Doc. 91-5810 Filed 3-11-91; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended March 1, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47435.

Date filed: February 26, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 466 (Reso 003yy—Cargo rates from Syria).

Proposed Effective Date: April 1, 1991.

Docket Number: 47436.

Date filed: February 26, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 467 (Reso 084d—GIT fares from Europe to South Asian subcontinent).

Proposed Effective Date: April 1, 1991.

Docket Number: 47441.

Date filed: March 1, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 468 (Reso 003a—Increase fares from Papua New Guinea to Australia).

Proposed Effective Date: April 1, 1991.

Docket Number: 47442.

Date filed: March 1, 1991.

Parties: Members of the International Air Transport Association.

Subject: RAC/Reso/366 dated February 14, 1991. Finally Adopted Resolutions, R-1 to R-25.

Proposed Effective Date: April 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-5727 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 1, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47437.

Date filed: February 26, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 26, 1991.

Description: Application of Air Charter (SAFA) pursuant to section 402 of the Act and Subpart Q of the Regulations, request a foreign air carrier permit authorizing it to provide charter air transportation of persons, property and mail between France and the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-5728 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-62-M

[Order 91-3-3 Docket No. 47445]

Order Instituting Japan Charter Authorization Proceeding (1991/1992)

AGENCY: Office of the Secretary, DOT.

ACTION: Institution of the Japan Charter Authorization Proceeding (1991/1992).

SUMMARY: U.S. air carriers can operate 400 to 450 one-way charter flights per year between the United States and Japan under the terms of a 1982 Interim Aviation Agreement and a 1989 Memorandum of Understanding. The precise number of charters available to U.S. carriers depends upon the number of charters operated by Japanese carriers in the preceding year. Up to 300 of the charters may be operated between the United States and Tokyo/Osaka. The aeronautical authorities of each country allocate the charter flights among their carriers.

The Department has decided to institute the Japan Charter Authorization Proceeding (1991/1992), to determine how these flights should be allocated among U.S. carriers for the October 1, 1991–September 30, 1992 period, and how many charters should be placed in a first-come, first-served pool for *ad hoc* charters for the same period. The Department is inviting applications from interested U.S. direct air carriers that currently hold the requisite Department authority to perform service to Japan and have the necessary aircraft to operate such service. The Department states that it may consider using simplified procedures for this proceeding rather than setting the case before an administrative law judge and will announce the appropriate procedures after receipt of applications.

DATES: Applications (including service proposals and supporting information), petitions for leave to intervene, and petitions for reconsideration of Order 91-3-3 are due March 21, 1991; answers shall be due April 1, 1991.

ADDRESSES: Applications, supporting information, petitions for leave to intervene, and petitions for reconsideration should be filed in Docket 47445, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., room 4107, Washington, DC 20590, and should also be served on Mr. Robert Goldner, room 9216, and the U.S. Air Carrier Licensing Division (P-45.1), room 6412 at the same address.

Dated: March 4, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-5753 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 91-017]

Towing Safety Advisory Committee Subcommittee on OPA-90 Implementation; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Oil

Pollution Act–1990 (OPA) subcommittee to the Towing Safety Advisory Committee (TSAC). The meeting will be held on Tuesday, April 2, 1991 in room 4315, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 1 p.m. and end at 4 p.m. Attendance is open to the public. The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Identification of projects where TSAC assistance would be valuable to the Coast Guard. Tentative projects include:
   a. Study on tanker navigation safety standards,
   b. Overfill and tank level or pressure monitoring devices,
   c. Periodic gauging of plating thickness,
   d. National planning and response system,
   e. Tank vessel manning,
   f. Tug escort requirements.

The subcommittee was formed to provide data and information to the Coast Guard on various technical aspects of the OPA With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the TSAC Executive Director no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at anytime; however, to ensure distribution to each Committee member, 10 copies of the written materials should be submitted to the Executive Director no later than March 27, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Pensivy, Executive Director, Towing Safety Advisory Committee, room 2412, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1406.

Dated: March 6, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–5755 Filed 3–11–91; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Environmental Impact Statement; Third Parallel Runway, Tulsa International Airport, Tulsa, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for a proposed third parallel runway which would accommodate air carrier traffic at Tulsa International Airport, Tulsa, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Tim Tandy, Airport Environmental Specialist, ASW–611E, Federal Aviation Administration, Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas 76193–0611. Telephone (817) 624–5859.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Tulsa Airports Improvement Trust, will prepare an EIS for a proposed third parallel runway which would accommodate air carrier traffic at Tulsa International Airport. The primary components of the proposed action would consist of the following items: (1) A 9,000-foot by 150-foot parallel air carrier runway, with high intensity runway lights (HIRL) and an instrument landing system (ILS), located approximately 6,475 feet east of the existing east runway; (2) an associated 9,000-foot by 75-foot taxiway with high intensity taxiway lights (HITL); (3) a 4,300-foot by 75-foot crossover taxiway and a 3,300-foot by 75-foot crossover taxiway with HITL. The Tulsa Airports Improvement Trust intends to request Federal Airport Improvement Program funds for development of the proposed airport.

Alternatives to the proposed action include no action, extending existing Runway 17L/35R to the north or south, and extending existing Runway 17R/35L to the south.

An Environmental Assessment was prepared in 1986 for a proposed third parallel runway and an associated Public Hearing was held on June 12, 1986. However, subsequent to preparation of that document and in response to certain concerns expressed, the runway location was shifted several hundred feet to the east to avoid and reduce some of the impacts. As a result of the significant shift in runway location, the FAA determined that preparation of an EIS would be the proper course of action.

The FAA intends to consult and coordinate with Federal, state, and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the proposed project. Scoping for the EIS will include a meeting to be held in the Conference Room, Second Floor, Terminal Building, Tulsa International Airport, Tulsa, Oklahoma at 10 a.m. on March 15, 1991, to solicit input from agencies and identified interested parties concerning the range of actions, alternatives and impacts to be considered. A notice will be placed in local newspapers of general circulation announcing the intent to prepare an EIS and soliciting comments on the scope of the study. While no formal scoping hearing is planned, written comments on the scope of the EIS will be considered throughout the process.

Issued on: March 1, 1991.

Otis T. Welch,

Manager, Airports System Capacity and Planning Branch.

[FR Doc. 91–5785 Filed 3–11–91; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–91–11]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATED: Comments on petitions received must identify the petition docket number involved and must be received on or before April 1, 1991.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A),

800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue. SW., Washington, DC 20591; telephone (202) 267–9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 6, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26477.
Petitioner: Alaska Mountain Air. Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow the pilot employed by petitioner to perform the preventive maintenance function of removing and/or replacing the passenger seats of aircraft used in part 135 operations.

Docket No.: 26467
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 135.152(b).
Description of Relief Sought: To allow U.S. regional airlines to operate the Shorts 330 aircraft in revenue service until May 1, 1991, without requiring those aircraft to be retrofitted with flight data recorders.

Dispositions of Petitions

Docket No.: 25896
Petitioner: Allen Gerbino.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought/ Disposition: To allow petitioner to remove, replace, reinstall, and store main rotor blades for his Hughes 500, Model 300 series helicopters. Denied, February 25, 1991, Exemption No. 5279.

Docket No.: 26353.
Petitioner: British Aerospace Commercial Aircraft Limited/Air Wisconsin.
Sections of the FAR Affected: 14 CFR 121.312(a)(2).
Description of Relief Sought/ Disposition: To amend Exemption No. 5243, which allows operation of three airplanes that do not fully comply with the heat release and smoke density requirements or interior materials as specified in § 121.312(a)(2). The exemption allows the operation of three airplanes, whose dates of manufacture are after August 20, 1990,with certain interior components that do not comply with the heat release and smoke emission requirements of § 121.312(a)(2). The amendment adds two additional airplanes to the exemption. Grant, February 6, 1991, Exemption No. 5243A

Docket No.: 26481.
Petitioner: Texas American Flight Academy, Inc.
Sections of the FAR Affected: 14 CFR 141.91(a).
Description of Relief Sought/ Disposition: To allow petitioner to conduct part 141 pilot training at a facility located in Ennis, Texas, which is approximately 52 miles from its main operations base in McKinney, Texas. Grant, February 25, 1991. Exemption No. 5280.

Docket No.: 022NM.
Petitioner: MarkAir
Sections of the FAR Affected: 14 CFR 25.855 (c) and (e).
Description of Relief Sought/ Disposition: To allow certification and operation of two de Havilland DHC–8–311 airplanes in certain combination passenger/cargo configurations without providing firefighting access into the cargo compartments. Grant, February 8, 1991, Exemption No. 5276.

[FR Doc. 91–5784 Filed 3–11–91; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration, DOT.

Environmental Impact Statement: City of Alexandria, VA

AGENCY: Federal Highway Administration

ACTION: Cancellation of the Notice of Intent.

SUMMARY: This notice rescinds the previous Notice of Intent issued on September 16, 1988, to prepare an environmental impact statement for a proposed highway project to construct a new interchange with Interstate 95 at the existing Clermont Avenue underpass in the City of Alexandria, Virginia. The document was also to address a connector(s) for Eisenhower Avenue to Duke Street.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Masuda, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone (804) 771–2380.

SUPPLEMENTARY INFORMATION: When the Notice of Intent was published, there was reason to believe that one or more of the possible alternatives may significantly affect the environment. However, after exhaustive environmental studies of all alternatives under consideration, it has been determined that none of the alternatives under consideration will have a significant impact on the environment. Therefore, in accordance with Federal regulations, the proposed project is considered a Class III Action, and the environmental impacts will be documented with an Environmental Assessment (EA).

Don W. Holloway,

Acting District Engineer, Richmond, Virginia.

[FR Doc. 91–5759 Filed 3–11–91; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552(b), the Government in the Sunshine Act; and Treasury Directive 21–03 section 8 (1–29–87): A report summarizing the closed meeting activities of the Art Advisory Panel during 1990, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, room 1565, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224, Telephone (202) 566–3770, (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4, 901 D Street, SW. room 224, Washington, DC 20024, Telephone (202) 252–8128, (Not a toll free telephone number).

Fred T. Goldberg, Jr.,

Commissioner.

[FR Doc. 91–5824 Filed 3–11–91; 8:45 am]

BILLING CODE 4830–01–M

Trade Show; IRS Electronic Tax Filing National Conference and Exhibition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of IRS's Electronic Tax Filing National Conferences and Exhibitions for 1991.

SUMMARY: The Electronic Filing Systems Office of the Internal Revenue Service (IRS) is offering three IRS Electronic Tax Filing National Conferences and Exhibitions in 1991. Dates and locations for the conferences are: July 16–17 in Arlington, Virginia; August 7–8 in Las Vegas, Nevada; and August 29–30 in New Orleans, Louisiana.

The conference and exhibition will provide a forum, in a trade show environment, on the latest information about electronic filing of federal tax returns. It will also be an opportunity to view the latest in computer hardware and software used for electronic tax filing.

Vendors of computer hardware, software, and other services related to electronic filing of tax return data are invited to exhibit their products during these two-day shows.

Seminars will be provided for new and experienced participants in electronic tax filing. Topics covered in the seminars will include the electronic filing of Individual returns and electronic/magnetic media filing of Fiduciary, Partnership, Employee Pension Plan, and the Form 1099 series of information returns. Attendance at these seminars will qualify for Continuing Professional Education (CPE) credits.

Electronic filing participants who currently have an application on file with IRS, will receive a mail-out that details the specifics of these shows.

DATES: July 16–17 in Arlington, Virginia; August 7–8 in Las Vegas, Nevada; and August 29–30 in New Orleans, Louisiana.

ADDRESSES:

Hyatt Regency at Washington National Airport, 2788 Jefferson Davis Highway, Arlington, VA 22202.

Bally's Casino Resort, 3545 Las Vegas Boulevard, Las Vegas, NV 89109.

Hyatt Regency at Louisiana Superdome, Poydros at Loyola Avenue, New Orleans, LA 70140.

FOR FURTHER INFORMATION CONTACT: Anyone interested in being an exhibitor may obtain an Exhibitor Prospectus by contacting: Rodney K. West (301) 773–1881, RP Exhibit Service, Inc., 1761 Olive Street, Capitol Heights, MD 20743, FAX #301–773–8742.

Questions about attending the shows should be directed to the Electronic Filing Coordinator at your local IRS district office.

Mary Findlay,

Acting Chief, Marketing and Quality Assurance Section.

[FR Doc. 91–5825 Filed 3–11–91; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 48
Tuesday, March 12,

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10:00 a.m., Tuesday, March 19, 1991.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public: The Board will consider the following:

(1) Housing Finance Directorate Report: Update on comments received on Community Support Requirements;
(2) Federal Home Loan Bank System Financial Report;
(3) Office of Finance Monthly Report;
(4) Federal Home Loan Bank System Monthly Membership Report;
(5) FHFB personnel update; and
(6) Report on Board's meeting with Federal Home Loan Bank Chairmen and Vice-Chairmen and meeting with Affordable Housing Advisory Councils' representatives.

Portions Closed to the Public: The Board will consider the following:

(1) Quarterly Dividend Briefing;
(2) Funds Management Issues;
(3) Bank Examination Division Report;
(4) Federal Home Loan Bank Presidents Compensation Study;
(5) Federal Home Loan Bank System Membership Application Policy and Procedures;
(6) Affordable Housing Financing;
(7) Federal Home Loan Bank Director Financial Disclosure;
(8) Briefing from a Federal Home Loan Bank on Membership Outreach, Budget Policy and Operations; and
(9) Board Management Issues.

The above matters are exempt under one or more of sections 552b(c)(2), (6), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (6), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Leonard H.O. Spearman, Jr., Executive Secretary to the Board, (202) 408-2574.

J. Stephen Britt,
Executive Director.
[FR Doc. 91-5977 Filed 3-8-91; 3:49 pm]
BILLING CODE 6725-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-91-08]

TIME AND DATE: Friday, March 15, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Inv. 22-52 (Peanuts)—briefing
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: March 5, 1991.

Kenneth R. Mason,
Secretary.
[FR Doc. 91-5906 Filed 3-8-91; 2:26 pm]
BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-91-08A]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published elsewhere in today's **Federal Register** is a document concerning this meeting.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m. Friday, March 15, 1991.

AMENDMENT TO THE AGENDA:

7. Commission vote to amend the Commission's FY 1991 budget approved December 20, 1989, totalling $42,430,000 to conform to the present allocation of funds directed November 20, 1990, totalling, $39,533,000.

In conformity with 19 CFR 201.37(b), Commissioners, Lodwick, Rohr, and Newquist determined that commission business required the change in subject matter of the meeting of March 15, 1991 by the addition of Agenda Item 7, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Brunsdale voted in the negative.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: March 7, 1991.

Kenneth Mason,
Secretary.
[FR Doc. 91-5910 Filed 3-8-91; 2:27 pm]
BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-91-09]

TIME AND DATE: Monday, March 25, 1991 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1 Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Inv. 701-TA-302 (Final) and 731-TA-454 (Final) (Fresh and Chilled Atlantic Salmon from Norway)—briefing and vote
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: March 7, 1991.

Kenneth R. Mason,
Secretary.

[FR Doc. 91-5907 Filed 3-8-91; 2:26 pm]
BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-91-10]

TIME AND DATE: Wednesday, March 27, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1 Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Invs. 701-TA-307 and 731-TA-498/511 (Preliminary) (Ball Bearings, Mounted and Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, The Republic of Korea, Spain, Taiwan, Turkey and Yugoslavia.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: March 7, 1991.

Kenneth R. Mason,
Secretary.

[FR Doc. 91-5908 Filed 3-8-91; 2:26 pm]
BILLING CODE 7020-02-M

NATIONAL SCIENCE FOUNDATION

DATE AND TIME:

March 22, 1991, 8:30 a.m. Closed Session
March 22, 1991, 9:00 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

STATUS:

Part of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED March 22: Friday, March 22, 1991.

Closed Session (8:30 a.m.–9:00 a.m.)

1. Minutes—February 1991 Meeting
2. Alan T. Waterman Award
3. Grants and Contracts

Open Session (9:00 a.m.–11:30 a.m.)

4. Chairman's Report
5. Minutes—February 1991 Meeting
6. Director's Report
7. Presentation on Social Science Research on Organizations
8. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 91–5867 Filed 3–8–91; 8:48 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, March 19, 1991.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5453—Highway Special Investigation Report: Emergency Fire Apparatus.

NEWS MEDIA CONTACT: Ted Lopatkiewicz 383–6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: March 8, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91–5951 Filed 3–8–91; 2:29 p.m.]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 11, 18, 25, and April 1, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 11

Thursday, March 14

9:30 a.m.
Briefing on Activities of the Center for Nuclear Waste Regulatory Analysis (CNWRA) and Activities of the NRC in the HLW Program (Public meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) a. Access Authorization Program for Nuclear Power Plants (Tentative) (postponed from March 7)

Friday, March 15

10:00 a.m.
Briefing on Agreement State Compatibility Issues (Public meeting)

Week of March 18—Tentative

Friday, March 22

2:00 p.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of March 25—Tentative

Thursday, March 28

10:00 a.m.
Periodic Briefing on Definitions of Releases Into Containment and Policy on the Use of the Updated TID–14844 by Existing Plants (Public meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of April 1—Tentative

Wednesday, April 3

10:00 a.m.
Periodic Briefing on Progress on Resolution of Generic Safety Issues (Public meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: March 7, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–5970 Filed 3–8–91; 2:27 p.m.]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:30 p.m. (closed portion), 3:30 p.m. (open portion), Tuesday, March 26, 1991.

PLACE: Offices of the Corporation, Fourth Floor Board Room, 1615 M Street NW., Washington, DC.

STATUS: The first part of the meeting from 1:30 p.m. to 3:30 p.m. will be closed to the public. The open portion of the meeting will commence at 3:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:30 p.m. to 3:30 p.m.):

1. President's Report
2. Finance and Insurance Project in Bolivia
3. Finance Project the Asia Pacific Growth Fund
4. Policy Briefings (3)
   (a) Support of reconstruction of Kuwait
   (b) Export Processing Zone/Togo
   (c) Credit Reform
5. Claims Report
6. Finance and Insurance Reports
7. Approval of 1/30/90 Minutes (Closed Portion)

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:30 p.m.)

1. Approval of 1/30/90 Minutes (Open Portion)
2. Notice to Board of Changes to OPIC Country List
3. Information Reports
   (a) Political Risk Insurance Issued for 1st Qtr FY 91
   (b) Country Concentration
   (c) Financial Statements as of January 31, 1991
   (d) Report on Smaller Business and Cooperative Activities for 1st Qtr FY 1991
   (e) U.S. Benefits and Less Developed Country Developmental Effects of Projects Assisted by OPIC for 1st Qtr FY 1991
4. Reconfirmation of meetings schedule for remainder of 1991

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 457–7007.

Dated: March 7, 1991.

Dennis K. Dolan,

OPIC Corporate Secretary.

[FR Doc. 91–5950 Filed 3–8–91; 2:28 pm]

BILLING CODE 3210–01–M

federal register

Tuesday
March 12, 1991

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 158

Passenger Facility Charges; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Notice No. 91-4A; Docket No. 26385]

RIN 2120-AD87

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice announces an extension of the comment period on the Passenger Facility Charges Notice of Proposed Rulemaking (NPRM) (56 FR 4678; February 5, 1991). The comment period is extended from March 7, 1991, until March 18, 1991. The extension responds to a joint request from the Air Transport Association of America (ATA), American Association of Airport Executives, (AAAE), and the Airport Operators Council International (AOCI). The extension is needed to permit these organizations additional time to develop joint comments responsive to the NPRM.

DATES: The comment period is being extended from March 7, 1991 to March 18, 1991.

ADDRESSES: Comments on the NPRM should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26385, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Lowell H. Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3831.

SUPPLEMENTARY INFORMATION: On February 5, 1991, the FAA issued Notice No. 91-4, titled Passenger Facility Charges. This proposal is intended to implement the Aviation Safety and Capacity Expansion Act of 1990 which requires the Department of Transportation to issue regulations under which a public agency may be authorized to impose an airport passenger facility charge (PFC) at a commercial service airport it controls. The proceeds from such PFC's are to be used to finance eligible airport-related projects that preserve or enhance capacity, safety or security of the national air transportation system, reduce noise from an airport which is part of such system, or furnish opportunities for enhanced competition between or among air carriers. The proposed rule sets forth procedures for public agency applications for authority to impose PFC's, for FAA processing of such applications, for collection and remittance of PFC's by air carriers, for recordkeeping and auditing by air carriers and public agencies, for terminating PFC authority, and for reducing Federal grant funds apportioned to large and medium hub airports imposing a PFC.

By letter dated March 5, 1991, the ATA, AAAE, and AOCI requested that the comment period be extended by 10 days to March 18, 1991. The request states that the organizations are currently in the process of developing joint comments responsive to the NPRM, that the complexity of the discussions has delayed finalization of their comments, and that their discussions will be concluded in the next several days. They further assert that their comments will result in a more workable, efficient rulemaking that will benefit DOT/FAA, airlines, airports, and the traveling public.

Notice No. 91-4 stated that because of the 180-day statutory deadline for completion of this rulemaking by May 3, 1991, the FAA would not be able to entertain requests for extensions of the comment period. However, in view of the likelihood that these parties will provide additional substantive information which will be helpful in formulating an effective final rule, the FAA agrees that it would be in the public interest to grant their request. Accordingly, the comment period is being extended to March 18, 1991, to afford all interested persons the opportunity to comment on this notice.

Issued in Washington, DC on March 7, 1991.

Lowell H. Johnson,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 91-5767 Filed 3-7-91; 11:32 am]

BILLING CODE 4910-13-M

Federal Register

Tuesday
March 12, 1991

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7 and 18

Electric Motor Assemblies; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 18

RIN 1219-AA61

Electric Motor Assemblies

AGENCY: Mine Safety and Health Administration (MSHA), Labor.
ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the specific requirements for MSHA approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. Applications for approval or extensions of approval submitted two years after the effective date of the final rule would be required to be in compliance with subpart J of part 7. Those motors that incorporate features not specifically addressed in subpart J of part 7 would continue to be evaluated under part 18.

DATES: Written comments must be received on or before June 14, 1991.

ADDRESSES: Send written comments to the Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background of Proposed Rule

On June 22, 1988, MSHA implemented new procedures and requirements for testing and approving certain products used in underground mines (53 FR 23486). As explained in that rulemaking, products approved under part 7 are required to be tested by the applicant or tested by a third party selected by the applicant. All testing is to be conducted using MSHA-specified test procedures with certification of test results by the applicant. In addition, the Agency has the right to observe all product testing. When requesting approval, the applicant is required to submit certain product information. This includes, for example, drawings and specifications to document compliance with the technical requirements. Based upon an evaluation of the technical documentation, MSHA observations of product testing, and a review of the certification statements, MSHA will issue an approval or notice denying approval of the product.

Once a product is approved under part 7, an approval holder is required to inspect or test critical characteristics of the product as part of its quality assurance program. Under the provisions of subpart A, the approval holder must report to MSHA any knowledge that a product has been distributed with critical characteristics not meeting required specifications. Upon receiving such a report, MSHA works with the approval holder to implement appropriate corrective action. As critical characteristics are features of a product which, if not built to specification, can create a hazard, immediate notification is necessary. MSHA performs periodic audits of products approved under part 7 to ensure that they are being manufactured as approved. If a product fails to meet the technical requirements of part 7 or creates a hazard related to this use, MSHA will take immediate action to address the problem, including revocation of the approval if necessary. Although MSHA's experience with existing subparts to part 7 is limited, primarily due to delayed effective dates, this transition has been positively received by manufacturers and applied without complications.

As a new subpart J to part 7, this proposal specifies the technical requirements and test procedures for the approval of electric motor assemblies. This proposal is derived from existing part 18 and MSHA policies. It would provide objective criteria for applicant or third party testing and replace subjective technical requirements with performance-oriented tests. The proposed tests are based on MSHA's engineering experience with the subjective criteria in the existing approval requirements. They are not intended to introduce more stringent testing methods, but rather to more explicitly state the tests used in MSHA's current testing program which have proven to be effective. Under the proposal, manufacturers would use these test procedures to measure, evaluate, and certify compliance of their product with the requirements of proposed subpart J of part 7 in order to receive an MSHA approval.

The proposal is consistent with the Federal Mine Safety and Health Act of 1977 (Mine Act), Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act. The proposal is issued under the authority of sections 101 and 508 of the Mine Act (30 U.S.C 811 and 957).

II. Paperwork Reduction Act

This proposal contains information collection requirements in § 7.303. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSHA (see address at the end of this discussion). The respondents would be mine equipment manufacturers. The burden hour estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collected information. In each instance, the resultant information collected would be used by MSHA to assess compliance with the proposed requirements. The information collection requirements contained in the proposal are discussed below.

Proposed § 7.303 would require applicants seeking approval of an electric motor assembly to submit an application for approval. MSHA estimates that there would be 50 applications submitted per year, each requiring 1.5 hours to prepare. The estimated burden hours are 75.

Existing § 7.4(a) requires records of test results and procedures that must be retained for at least 3 years. Standard testing protocols used by the manufacturing community include the keeping of records of product testing; therefore, no additional burden hours are assigned to this requirement.

Existing § 7.7(d) requires applicants to report to MSHA any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications. MSHA estimates that under proposed subpart J manufacturers would submit 40 reports per year requiring 15 minutes per report. Estimated burden hours are 10. The proposal would require applicants to maintain records on the distribution of each product bearing an approval marking as set forth in § 7.7(c). This provision does not specify the type of record, and MSHA believes applicants will use existing sales record systems to comply; therefore, no burden hours are assigned to this requirement.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Diana Rowen, Desk Officer for MSHA, room 3001, New Executive Office Building, Washington, D.C. 20503.

III. Discussion of Proposed Rule

The following section-by-section analysis discusses each proposed provision to subpart J of part 7 and each proposed revision to part 18. All part and section references are to title 30 of the Code of Federal Regulations (30 CFR).

A. Section-by-Section Discussion of Part 7

Section 7.301 Purpose and Effective date.

This section, derived in part from existing § 18.1, would revise and simplify the statement of purpose and would require that certain electric motor assemblies be approved under part 7. The proposed rule would establish the specific requirements for approval of explosion-proof motor assemblies intended for use on-board approved equipment. Those motor assembly designs that contain devices not provided for under the proposed subpart such as devices for ventilation, pressure relief and drainage would continue to be evaluated under existing part 18. In addition, designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology would also be addressed under part 18. These designs are not being covered under this subpart because their acceptance by MSHA requires an individual evaluation of design and performance tests. Designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology would also require evaluation on an individual basis.

MSHA proposes a two-year phase-in period for the implementation of this subpart. This two-year phase-in period was chosen to allow industry time to develop testing facilities. MSHA specifically requests comments on the adequacy of this phase-in period. During the phase-in period, MSHA would accept applications for certification and extension of certification under existing part 18 or applications for approval under this proposed subpart. After two years, all motor assemblies submitted for approval, except those with designs not covered under this proposed subpart, would be required to be submitted under this subpart and meet its requirements.

Section 7.302 Definitions.

The following definitions apply to the approval of electric motor assemblies. Most are derived from existing § 18.2, although some are new. In order to address the specific requirements for motor assemblies some of these definitions have been modified. All of these definitions are designed to clarify the requirements of subpart J.

Afterburning. The proposal would define the combustion of any flammable mixture that is drawn into an enclosure after an internal explosion in the enclosure as afterburning. This definition would clarify the definition in § 18.2 by stating that afterburning is determined through detection of secondary pressure peaks occurring subsequent to the initial explosion. This phenomenon is characterized by the development of secondary pressure peaks following a negative or zero pressure at the termination of the preceding pressure peak.

Cylindrical joint. The proposal would identify a joint comprised of two contiguous, concentric, cylindrical surfaces as a cylindrical joint. This definition would be the same as that in § 18.2.

Explosion-proof enclosure. The proposal would modify the existing definition in § 18.2. It defines an explosion-proof enclosure as a metallic enclosure used as a winding compartment, conduit box, or a combination of both that complies with the applicable requirements of § 7.304 and that is constructed to withstand the explosion tests of § 7.306. This definition would be modified to be specific to electric motor assemblies as this subpart applies only to motor assemblies.

Fastening. This definition would include a bolt, screw or stud used to secure adjoining parts to prevent the escape of flame from an explosion-proof enclosure. Although the definition is new, it reflects the items included as fastenings in existing § 18.32.

Flame-arresting path. This definition would identify two or more adjoining or adjacent surfaces between which the escape of flame is prevented as a flame-arresting path. It is the same as that contained in § 18.2.

Internal free volume (of an empty enclosure). The proposal would identify the internal free volume of an empty enclosure as that volume remaining after deducting the volume of any part that is essential to maintaining the explosion-proof integrity of the enclosure or necessary for operation of the motor. Essential parts would include the parts that constitute the flame-arresting path as well as those necessary to secure the parts that constitute a flame-arresting path. This definition is important because the volume of the enclosure defines the minimum design requirements of the explosion-proof enclosure. While the definition is new, it retains the interpretation of "volume of empty enclosure" currently used for the classification of construction requirements contained in existing § 18.31.

Motor assembly. This new definition defines a motor assembly as the winding compartment including a conduit box when specified. It would also clarify that the motor assembly would be comprised of one or more explosion-proof enclosures. This definition describes the typical arrangement currently used for motor assemblies in underground mines.

Plane joint. This definition would identify a plane joint to be a joint comprised of two adjoining surfaces in parallel planes. It is the same as that contained in § 18.2.

Step (rabbet) joint. This definition is derived from § 18.2. It would retain its existing meaning and specify a step or rabbet joint to be a joint comprised of two adjoining surfaces with one or more changes in direction between the inner and outer edges. Examples of a step joint would be one composed of a cylindrical portion and a plane portion or one composed of two or more plane portions.

Stuffing box. This new definition would identify an entrance that has a recess filled with packing material for cables extending through a wall of an explosion-proof enclosure.

Threaded joint. This definition would maintain the definition in existing § 18.2 that a threaded joint is a joint consisting of a male and a female-threaded member, both of which are the same type and gauge.

General definitions such as "applicant," "approval," and "post-approval product audit" are not included in this subpart. They are defined in the general provisions of subpart A of part 7.

Section 7.303 Application requirements.

Under the proposed rule, derived from existing § 18.6(a), an application for approval of a subpart J motor assembly would be required to contain sufficient information to document compliance with the technical requirements of subpart J. The application would be accompanied by a composite drawing or drawings showing the design specifications for the motor assembly. For clear identification, each drawing would be required to be titled, dated, and numbered and include the latest revision number. A sample of a composite drawing would be available upon request from the Approval and Certification Center, Industrial Park Road, Dallas Pike, Triadelphia, West Virginia 26059.

Section 7.304 Technical requirements.

This section would revise and update the existing technical requirements for the approval of motor assemblies. The proposed technical requirements for the approval of motor assemblies are derived from the existing requirements of part 18.

Paragraph (a) is derived from existing § 18.47 and would specify the maximum voltage rating as 4160 volts which is the voltage limitation for machines approved under part 18.

Paragraph (b) is derived from existing § 18.23 and would limit the maximum temperature of the external surfaces of the motor assembly to 150 °C (302 °F) when operated at the manufacturer's specified ratings, which would be considered the normal operating conditions referred to in § 18.23. This is to prevent the thermal ignition of coal dust.

Paragraph (c) is derived from existing § 18.24 which requires the clearance between live parts and casings to be sufficient to minimize the possibility of arcs striking the casings. The proposal would establish specific minimum clearance distances based upon the circuit voltage of the live parts. These minimum clearances are listed in table J–1. The minimums would be applicable to the distance between uninsulated electrical conductor surfaces or between uninsulated electrical conductor surfaces and grounded metal surfaces within the enclosure. These proposed minimum clearances are the result of an engineering study performed in conjunction with high voltage studies at MSHA's Approval and Certification Center. These clearances would clarify existing requirements and would not result in additional costs to manufacturers or impose new requirements.

Paragraph (d) of § 7.304, derived from existing § 18.34(a)(4), would not allow the use of parts such as bearings and seals for flame-arresting paths because they can become worn during the motor operation and therefore cause the explosion-proof integrity of the enclosure to be lost. Paragraph (e), derived from existing § 18.34(a)(6), would add O-ring grooves to the types of grooves to be deducted when determining the width of the flame-arresting paths. This change is consistent with existing MSHA policy that addresses the use of O-ring grooves. Paragraph (f), derived from existing § 18.34(a)(8), would only allow an outer bearing cap to form part of a flame-arresting path if it houses the bearing. A bearing cap that does not house the bearing is not essential for the motor operation and could inadvertently be removed from the motor assembly. If the bearing cap were part of the flame-arresting path, its removal would cause the motor assembly to lose its explosion-proof integrity.

The design requirements of paragraph (g) are derived from existing §§ 18.26, 18.29, 18.31 through 18.34 and current policy. Paragraph (g)(1), derived from existing § 18.31(a)(1), would require the motor assemblies to be constructed of metal, designed to withstand a minimum internal pressure of 150 pounds per square inch, gauge (psig), to have castings free from blow holes and to be explosion-proof as determined by the tests of § 7.306. These requirements would ensure that a motor assembly would withstand an internal methane explosion.

Proposed § 7.304(g)(2), derived from existing § 18.31(a)(2), would establish the static pressure test requirements of § 7.307 as the minimum performance level for welded joints forming an enclosure. Submitting an enclosure to this performance test would be an alternative to welding in accordance with, or exceeding, American Welding Society (AWS) standard D14.4–77. Existing § 18.31(a)(2) states that these welds are to be made in accordance with AWS standards, with no specific standard identified. MSHA policy has been to accept welds made in accordance with AWS D14.4–77.

Paragraph (g)(3), derived from existing § 18.31(a)(3), would limit the magnesium content of external rotating parts constructed of aluminum alloys a 0.6 percent. Existing § 18.31(a)(3) specifies this magnesium limit to be 0.5 percent. The Agency developed a policy approximately 20 years ago allowing a 0.6 percent magnesium content based upon experimental data demonstrating this value to be within the range of permissible safety limits. Paragraph (g)(3) is also derived from existing § 18.26, and would require that all non-metallic rotating parts be provided with a means to prevent an accumulation of static electricity. This is to prevent a build-up of a static charge that could produce an incendive spark or arc.

Proposed § 7.304(g)(4), derived from existing § 18.31(a)(5); would require threaded covers and mating parts to be designed with Class 1A and 1B coarse, loose fitting threads. These are thread classifications from American National Standards Institute (ANSI) ANSI B1.1–1982. This provision would retain the requirement contained in existing § 18.31(a)(5); however, the classification terms (Class 1A and 1B) have been updated to reflect current terminology. The rule is still designed to minimize binding of threads. In addition, as in § 18.31(a)(5), the cover would be required to be secured against loosening.

Paragraph (g)(5), derived from existing § 18.33, would specify requirements for the planarity, surface finish, and preparation of all flame-arresting path surfaces. These requirements are important because they relate to maintaining the maximum clearances between flame-path surfaces to prevent the escape of flames and/or hot gases resulting from an internal explosion.

Paragraph (g)(6), derived from existing § 18.34(c), would specify clearance requirements between laminations and end rings for laminated stator frames. This also addresses hazards associated with the escape of flames and/or hot gases resulting from an internal explosion.

Paragraph (g)(7) of § 7.304 is derived from existing § 18.32(b) and would require locking devices to be provided for all fastenings securing parts which form flame-path fits. The proposed rule would allow alternatives to lockwashers that meet the lockwasher equivalency test in § 7.308. The lockwasher equivalency test of § 7.308 is proposed to provide an objective means of evaluating devices as currently permitted under existing § 18.32(b). Paragraph (g)(8), which is derived from existing § 18.32(c), would require all fastenings that hold a flame-path part to be of uniform size if possible. This is intended to preclude improper assembly that may result in insufficient thread engagement or bottoming of the fastening.

Paragraph (g)(9), derived from § 18.32(d) would require that holes be threaded deep enough so the fastenings would not bottom if the locking device is omitted. Paragraph (g)(10), which is also derived from existing § 18.32(d) and § 18.34(a)(9), would require that holes for fastenings not penetrate to the interior of the enclosure except as specified. This would prevent the existence of a through hole from the interior of the enclosure to the exterior through which flames and/or hot gases could escape in the event that a fastening were inadvertently omitted. Holes made through motor casings for bolts, studs or screws to hold parts that are essential for the motor operation would be allowed.

Paragraph (g)(11) of § 7.304, derived from existing § 18.34(b), would specify requirements for the assembly of pole pieces to the frame of direct current motor assemblies including the use of shims during assembly of the pole pieces. The pole bolts are necessary to

maintain the pole pieces in the frame. The proposed rule would require the total thickness of the shims to be specified, if used. This specification is required to determine the adequacy of the bolt engagement in the pole pieces. The proposed rule also would require the shim assembly to meet the same requirements as the pole piece when mounted to the frame.

Paragraph (g)(12) would allow for the use of coil-threaded inserts in holes for fastenings, provided they have conventional screw threads, the holes for the inserts are drilled and tapped to the insert manufacturer's specifications, and the insert is long enough to ensure the required minimum thread engagement of the fastening in the insert. Although not addressed in existing part 18 requirements, current policy, based upon field experience, evaluation and testing by MSHA, permits their use. This provision would allow correction of damaged threads for fastenings securing flame-path parts that could lead to the expulsion of flames and/or hot gases due to an internal explosion.

Paragraph (g)(13) of § 7.304, derived from existing § 18.32 (e), would clarify the requirement for a minimum of ⅛" of stock at the bottom of each blind hole by identifying the subject holes as those that could penetrate into the interior of the explosion-proof enclosure. This requirement would provide protection against failure of the enclosure surface beneath the blind hole in case of fastenings not being present in the holes.

Paragraph (g)(14), derived from existing § 18.32(f), would clarify the requirement that fastenings hold only parts that are essential for maintaining the explosion-proof integrity of the motor or necessary for the operation of the motor. This would ensure the proper thread engagement necessary to maintain the explosion-proof integrity of the enclosure. The proposal would also retain the requirement that the same fastenings not be used for making electrical connections. This would address the concern that the electrical energy could cause the connection to loosen or the hardware to deteriorate.

Paragraph (g)(15), derived from existing § 18.29(c), would clarify the requirements for through holes in explosion-proof enclosures. Although all through holes are required to be plugged, the plug for holes where future access is necessary would only have to be spot welded or brazed, allowing for removal. However, plugs in through holes not requiring future access would have to be continuously welded all around for permanent assembly. The proposed rule also would require removable plugs to meet the flame-arresting path requirements of proposed § 7.304 (g)(19). Figure J–1 in the appendix illustrates the alternate methods of securing the plug.

Paragraph (g)(16) is new and would specify the acceptable location of O-rings in a flame-arresting path. Although not addressed in existing part 18, current policy specifies these locations when O-rings are installed to permit checking of flame-path fits without interference from O-rings. This proposed requirement is based upon the Agency's field experience. Figures J–2, J–3, J–4 and J–5 in the appendix are included to clarify the required locations for O-rings.

Paragraph (g)(17) is new and would set requirements for the mating parts of a pressed fit. Although not addressed in existing part 18, these requirements are current policy developed to define pressed fits. A pressed fit would have to meet minimum interference and length requirements. These requirements are intended to ensure the fit is sufficient to maintain the explosion-proof integrity of the motor assembly.

Paragraph (g)(18) of § 7.304, derived from existing § 18.31(a)(5), would require threaded joints to meet the applicable flame-path requirements of proposed § 7.304 (g)(19). This would address the hazards associated with the expulsion of flames and/or hot gases along these surfaces.

Paragraph (g)(19) would reference table J–2 and footnotes that specify the design requirements for flame-paths based on the volume of the empty enclosure. These provisions repeat requirements derived from existing § 18.31(a)(6), with a few clarifications and alternatives explained below.

Under the maximum fastening spacing for joints, portions of which are in different planes, the specification of 8 inches with a minimum of 4 fastenings would be added. This proposal would provide an objective requirement to replace the part 18 requirement that each application be evaluated individually. MSHA's experience with explosion-tested designs indicates that these minimum requirements would provide a design adequate to maintain the explosion-proof integrity of the enclosure.

Footnote 4 of table J–2, derived from existing § 18.34(d), would specify alternate flame-path dimension requirements for rabbet (step) joints on small motor assemblies having internal free volume not exceeding 350 cubic inches and joints not exceeding 32 inches in outer circumference. The proposed requirements would allow minimum total widths of rabbet (step) joints to be shorter than those specified in table J–2, provided the corresponding tighter clearances are maintained. Figure J–6 in the appendix is included to provide an illustration of a rabbet (step) joint.

Footnote 7 would specify clearance and location requirements for steel dowel pins. These pins are generally used in cover flanges to aid in aligning the covers. Although not addressed in existing part 18, these requirements would be consistent with current policy.

Footnotes 8 and 9 would contain new performance-oriented criteria to evaluate fastenings not meeting the minimum diameter and thread engagement dimensions specified. Footnote 8 would allow the use of fastenings with diameters smaller than those specified in the table, provided that the enclosure is first tested to meet the requirements of § 7.307 (static pressure test) and then § 7.306 (explosion-test). This new provision would provide performance criteria upon which fastenings with smaller diameters could be evaluated. Footnote 9 would allow minimum thread engagement less than the diameter of the fastening specified provided the enclosure meets these same test requirements. The proposed criteria would ensure adequate strength of the fastenings and threads for the motor design.

Footnote 10 of table J–2, which is new, would specify that the maximum clearance applies only when the fastening is located within the flamepath. It would clarify when the requirement in the table is applicable.

Footnote 11 would state that the edge of the fastening hole must include the edge of any machining done to the fastening hole, such as chamfering. This is consistent with existing policy and would be added for clarification. Footnote 13 would require that shafts or operating rods not deform during normal operation. This performance requirement would replace the ¼" minimum diameter design requirement for shafts and operating rods in existing § 18.31(a)(6).

Paragraph (h) of § 7.304, derived from existing § 18.37, would specify the requirements for lead entrances. Except as explained below, the requirements would be the same as contained in § 18.37. Paragraph (h)(1) would require each cable extending through an outside wall of the motor assembly to pass through a stuffing-box lead entrance. This new provision would reflect the Agency's belief that this is the only type of lead entrance for which objective criteria can be developed at this time. Paragraph (h)(2)(ii) would provide for a

minimum of three effective engagement threads for the packing gland nut. Although not contained in existing part 18, this minimum engagement is addressed by current policy. It was developed to define what the minimum thread engagement is for adequate mechanical strength. Paragraph (h)(5) would replace the term "asbestos packing material" with "MSHA accepted rope packing material" in order to address acceptable asbestos substitute materials. For clarification, Figures J–7 through J–14 in the appendix would be included for use with the lead entrance requirements of paragraph (h).

Paragraph (i) would specify requirements for insulating material, with respect to combustible gases. These requirements are derived from existing § 18.25. Paragraph (i)(1) would retain the requirement prohibiting the use of insulating materials that give off volatile gases when subjected to destructive electrical action. Paragraph (i)(2) would allow any method of treatment to remove combustible solvents, instead of only heat as provided under existing § 18.25(b). As the desired result is removal of any combustible solvents, the method of removal is not critical.

Section 7.305 Critical Characteristics

This section is new and lists the critical characteristics that would be required to be inspected on each motor assembly that has an approval marking. As defined in subpart A of part 7, a critical characteristic is a feature of a product that, if not manufactured as approved, could have an adverse effect on safety. The proposal would assure the explosion-proof integrity of the motor assembly prior to use by requiring inspection of the critical characteristics of an approved motor assembly. This list of critical characteristics was developed using the applicable technical requirements in § 7.304 of this proposal.

Section 7.306 Explosion Tests

Section 7.306, derived from existing § 18.62, would set forth the equipment, test procedures and acceptable performance criteria for the testing of a motor assembly to withstand an internal explosion of a combustible gas mixture. The provisions of this section would provide objective criteria to evaluate the explosion-proof performance of a motor assembly.

Paragraph (a) would require the use of an explosion test chamber, methane gas supply, electric ignition source and a pressure recording system when conducting explosion tests. Factors that would affect the accuracy, reliability and repeatability of the testing procedures would be specified.

The explosion test chamber would be defined in paragraph (a)(1) as being designed and constructed to contain an explosive gas mixture. The gas mixture, as described in the testing procedures, would surround and fill the motor assembly being tested. The explosive gas contained within the chamber would have to envelop the motor assembly during testing. The amount of leakage from the chamber would be controlled so that the gas mixture would be maintained within the specified tolerances for the duration of the testing. Therefore, a gas-tight chamber would not be required. The chamber would be darkened and have flamepath viewing capabilities enabling the testing personnel to discern the discharge of flame along flamepaths as well as the ignition of the explosive mixture surrounding the motor assembly being tested.

As specified in paragraph (a)(2) the methane gas supply would have to be composed of at least 98 percent of combustible hydrocarbons with inert products comprising the remainder. A minimum of 80 percent of the gas, by volume, would be required to be methane. This composition of gas, which would be specified to provide reliable and repeatable test results, is typical for commercial natural gas (methane) supplies.

Paragraph (a)(3) would define the coal dust to be used in the explosion tests. The existing identification of "Pittsburgh bed coal dust" of § 18.62(a) would be replaced by a minimum volatile matter and BTU content. This change would allow equivalent coal from other coal seams to be used in the tests. The requirement that the coal be ground to a fineness of minus 200 mesh would be retained.

Paragraph (a)(4) would establish the minimum energy level for the electric spark ignition source as 100 millijoules. This minimum energy level would ensure that there is sufficient energy available to ignite the explosive gas mixture within the motor assembly during each test. This provision would retain the requirement in existing § 18.62(a) that an electric spark ignition source be used for the testing.

Paragraph (a)(5) is derived from § 18.62(a) and would retain the existing requirement that the explosion pressure developed during testing be recorded. The proposal would clarify this requirement by specifying that the pressure recording system must indicate the pressure peaks within the tested motor assembly as described in the test procedures.

Paragraph (b) of § 7.306 would describe the general test procedures for conducting the explosion tests. The preparation of the motor for testing would be described in paragraph (b)(1). This paragraph would require motor assemblies being tested to be equipped with unshielded bearings and have all parts not contributing to the operation or assuring the explosion-proof integrity of the enclosure removed. Examples of those parts to be removed would include oil seals, grease fittings, hose conduit, cable clamps and outer bearing caps that do not house the bearings. Preparation of the motor assembly in this manner is consistent with existing MSHA policy.

The types of parts identified in paragraph (b)(1) could obstruct the observation of flame paths during testing and possibly inhibit the expulsion of flames and hot gases. Additionally, since these parts do not contribute to operation or explosion-proof integrity of the motor, they could be omitted with no reduction in operational capabilities. Testing with these parts not present would ensure that no reduction in safety would result in such instances.

Paragraph (b)(2) would contain the general procedures of filling the chamber and motor assembly with explosive mixtures, the locations for pressure measurements and the number of tests permitted before the chamber would be purged and recharged. The motor assembly would have to be observed for discharge of flames during each test. In order to provide adequate observation of any discharge of flames, each externally visible flamepath fit would have to be observed for discharge of flame for at least two tests, one with coal dust added.

When the motor assembly is filled with and surrounded by explosive methane mixtures for each test, the gas concentrations within the chamber would be between 6.0 percent and the concentration that is within the motor assembly just before ignition. The gas mixtures must be adequately mixed to ensure that homogeneous gas concentrations within the explosive limits are present for the test to be accurate.

The proposal would also specify that a single spark source is to be used for all testing, with test holes of sufficient quantity and location to permit ignition and pressure recording in each enclosure as required in paragraph (c).

Finally, paragraph (b) would require the motor assembly to be completely

purged and recharged with a fresh explosive gas mixture from the chamber or by injection after each test. The chamber would be required to be completely purged and recharged as necessary. The oxygen level would be maintained at no less than 18 percent. In the absence of oxygen monitoring equipment, the proposal includes an alternative method of ensuring this level is maintained. This method would limit the maximum number of tests between purgings to no more than the number obtained by dividing the chamber volume by forty times the motor assembly volume. This proposed requirement for purging and recharging of the chamber is the result of testing and analysis of data obtained by MSHA.

The purging and recharging sequences would be required in order to provide appropriate concentration levels of the combustion gases and the combustion by-products within the motor assembly and chamber. The concentration levels of these various gases must be maintained within proper limits to ensure reliable and repeatable ignition and combustion of the explosive gas.

Paragraph (c) would provide the specific testing procedures to be followed for each series of tests conducted on a motor assembly. The number of tests, methane concentration levels, stationary or rotating rotor, location of ignition source, and use of coal dust would be specified. Existing § 18.62(a) requires testing under these various conditions; however, specific values are not stated. The values that would be required under this proposed rule have been developed from the Agency's testing experience and existing policy. The procedures would provide an objective testing procedure to evaluate all designs foreseen to be explosion tested under this subpart.

The methane concentrations of 7.0 ± .3 and 9.4 ± .4 percent would be specified to accomplish testing at easily ignitable and violently explosive values, respectively. Ignitions while the rotor is rotating at rated speed would test the motor assembly at maximum internal turbulence. Ignitions with the rotor stationary would test the motor assembly with no turbulence along the flamepath. Turbulence along the flamepath might prevent flames from exiting. If the motor assembly incorporates a non-isolated conduit box, two additional tests would be proposed with ignitions within the conduit box. These tests are designed to detect pressure piling in the winding compartment resulting from ignitions in the conduit box. Pressure piling from pre-compression of the gases in the winding compartment due to ignition of the gases in the conduit box could result in higher pressures being attained.

Four tests would then be conducted with the gas concentration at 9.4±.4 percent methane and 0.05 ounce per cubic foot of internal free volume of the motor assembly of finely ground coal dust. The requirement of introducing coal dust is derived from § 18.62(a). The existing standard does not specify the quantity of coal dust to be added. The value of 0.05 ounce per cubic foot volume was established through MSHA's testing experience and engineering analysis to provide sufficient coal dust to coat all internal surfaces of the motor assembly.

These four tests, two with the rotor stationary and two with it rotating at rated speed, would require ignitions within the motor assembly at varying locations. These locations were chosen, based on MSHA's testing experience, to produce the greatest potential for development of the highest pressures within the motor assembly upon ignition of the explosive mixture.

Paragraph (c)(4) would outline additional testing procedures to be followed for motor assemblies that incorporate a conduit box isolated from the winding compartment. Examples of isolating barriers would be terminals or potting compound, such as chico. Paragraph (4)(i) would describe the location of ignition and pressure recording positions for the conduit box. Two ignition points would be utilized for a conduit box with internal free volume greater than 150 cubic inches. One ignition point would be as near to the geometric center as practical and the other as far as possible from the isolating barrier between the conduit box and winding compartment. Pressure recording points would be on the same and opposite sides of the conduit box as the latter ignition point. One ignition point as near to the geometric center as practical and one pressure recording point on a side of the conduit box would be used for a conduit box with internal free volume equal to or less than 150 cubic inches.

Paragraph (4)(ii) would require the conduit box to be tested separately by performing the tests with the isolating barrier in place. A total of ten explosion tests are to be performed on the conduit box. Six tests with 9.4±.4 percent methane by volume followed by two tests with 7.0±.3 percent methane by volume would have to be conducted. The remaining two tests are to be conducted at 9.4±.4 percent methane with coal dust added. The quantity (per cubic foot) and specifications of the coal dust would be the same as that provided for in paragraph (c)(3). If the internal free volume of the conduit box exceeds 150 cubic inches, the tests are to be equally divided between the two ignition points.

Paragraph (4)(iii) would describe the testing sequence to be followed in removal of the isolating barrier. If the isolating barrier is comprised of multiple assemblies, such as terminals, one assembly would be removed for the initial series of six explosion tests. Following this initial series of tests, one test would be conducted following the removal of each additional assembly. This procedure would continue until the motor assembly has been tested with all isolating barrier assemblies removed. Each test conducted under this paragraph would be performed using an explosive gas mixture containing 9.4±.4 percent methane by volume within the conduit box and winding compartment. For the initial six tests, the rotor would be stationary for one test and rotating for another for each of three ignition points. The three ignition points would be opposite ends of the winding compartment and the conduit box ignition point which provided the highest pressures during the tests conducted in paragraph (c)(4)(ii). Of these three ignition points, the one that produced the highest recorded pressures would be used for testing following removal of each additional isolating assembly (sectionalizing terminal).

Paragraph (d) would provide additional testing procedures or inclusion of a warning statement for any motor assemblies where recorded pressures exceeding 110 psig result following removal of any or all isolating barriers. The additional testing would require the motor assembly to withstand a static pressure test at a pressure of twice the maximum recorded explosion test pressure. As an alternative to conducting the static pressure testing, a warning statement would be required. The warning statement, incorporated on the approval plate, would have to state that the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly.

During maintenance and repair of electric motor assemblies, isolating barriers might not be included in the assembly procedure. Normally, there is no evidence to indicate the prior existence of an isolating barrier. Deletion of this barrier could result in development of a hazardous situation with no prior warning. Paragraphs (c)(4)(iii) and (d) would address this situation.

Some winding compartment-conduit box combination designs can result in increased explosion pressures due to pressure piling. The provisions of paragraph (c)(4)(iii) and (d) would allow the use of such designs while providing what MSHA believes to be adequate safeguards. A warning statement on the approval plate would notify the user that the integrity of the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly.

Paragraph (e) would describe the acceptable performance criteria for the explosion tests. These criteria are derived from existing § 18.62 (b) and (c). The proposal would require that there be no flame discharge from the motor assembly or ignition of the explosive mixture surrounding the motor assembly. These conditions would indicate that the flame-arresting paths are inadequate to prevent the escape of flame and the enclosure is not constructed to withstand and contain internal explosions of methane-air mixtures, respectively. Rupture of any part of or any panel or divider within the motor assembly, clearances along accessible flame-arresting paths in excess of those specified in subpart J and permanent deformation greater than 0.040 inch per linear foot are each indications of structural deficiencies of the motor assembly.

The criterion which considers development of afterburning as an unacceptable result of explosion tests is derived from § 18.62(b)(3). The term "afterburning" is applied to combustion, immediately after an internal explosion, of a gaseous mixture that was not in the enclosure at the time of that explosion. Sometimes the external gases are drawn into a motor interior immediately after an explosion as a result of the cooling of the product of the original explosion or otherwise and continue to burn. If prolonged, afterburning may damage the insulation. What is more serious is that the heating may allow flames to pass to the outside of the apparatus along flame arresting paths that would otherwise be effective in cooling them. This condition reflects deficiencies in the motor assembly and would represent increased hazards in an explosive atmosphere.

The occurrence of subsequent pressure peaks within an electric motor assembly in conjunction with an internal explosion is not an unusual event. This phenomenon occurs in multiple compartmented enclosures when the explosion is initiated in one compartment and propagates to the others. This occurrence differs from afterburning in that the secondary pressure peaks result from the combustion of the gases already present in the enclosure at the time of ignition. The pressure developed from the initial explosion is not completely dissipated at the time the secondary peaks develop.

Development of pressures exceeding 110 psig developed during explosion tests would not be acceptable, unless the enclosure has met the acceptable performance criteria of the static pressure tests conducted at twice the maximum recorded explosion test pressure or a warning statement in accordance with proposed § 7.306(d) is included on the approval plate. This provision would modify the existing requirements contained in § 18.62(c).

The ignition and pressure recording locations specified in the explosion test procedures are designed to provide the maximum pressure development and sensing for the enclosures. However, variations in enclosure designs may cause the specified locations to differ slightly from the "optimum" locations. To provide for this potential variation, the proposal would require additional testing at a pressure indication of 110 psig rather than the 125 psig required for in existing § 18.62(d). The proposal would also require this testing to be done statically rather than dynamically as specified in the existing regulations. The Agency believes that static pressure testing at 2 times the highest recorded explosion test pressure will provide an adequate safety margin to ensure a safe design. The static pressure test at these higher pressures also provides greater safety to the testing personnel since the development and release of the testing pressure can be controlled.

Section 7.307 Static Pressure Test

Section 7.307 would describe the test procedures and the acceptable performance criteria for conducting static pressure tests. The proposed static pressure test is new and would provide an alternative means of satisfying the technical requirements of § 7.304(g)(2) for welded joints, § 7.304(g)(19) (footnote 8) for diameters of fasteners, and § 7.304(g)(19) (footnote 9) for engagement of fasteners. The test would also be used, as specified in § 7.306(d) and (e)(6), for motor assemblies where explosion test pressures exceed 110 psig. The test procedures are based on the static test procedures developed as part of the approval criteria for high voltage machines containing on-board switching of high voltage circuits. These criteria resulted from engineering investigation and testing experience. The acceptable performance criteria would be the same performance requirements of § 18.62 with regards to physical failure conditions.

The proposed static pressure test would provide an alternative means of satisfying the requirements of the above sections because the concern addressed by those sections was that of failure due to physical stress and deformities.

Section 7.308 Lockwasher Equivalency Test

Section 7.308 would propose new test procedures and acceptable performance criteria when conducting tests on locking devices other than lockwashers. The lockwasher equivalency test would provide an alternative means of satisfying the technical requirement of § 7.304(g)(7) if a locking device other than a lockwasher is used. The test has been developed based upon testing procedures specified in Society of Automotive Engineers (SAE) recommended practice, Torque-Tension Test Procedure for Steel Threaded Fasteners (SAE J174, 1971) and Military Specification, Inserts, Screw-Thread, Helical Coil (MIL–I–8846B, 1973)

Section 7.309 Approval Marking

Section 7.309, derived from § 18.13, would require a legible and permanent approval plate with the assigned MSHA approval number inscribed. The plate would be required to be securely attached to the motor assembly in a manner that does not adversely affect the explosion-proof integrity of the motor assembly. The proposal would allow identification of approved subpart J motor assemblies in a manner that facilitates field identification of the motor assembly as approved by MSHA.

Section 7.310 Post-Approval Product Audit

Section 7.310 is new and would require an approval holder, upon request, to make available to MSHA at no cost an approved subpart J motor assembly for audit. This request would be made no more than once a year by MSHA, except for cause. The audit would be made at a mutually agreeable site and time. This would be in addition to MSHA's ongoing quality assurance program for which the agency can obtain products for audit at any time at MSHA's expense.

Section 7.311 Approval Checklist

Section 7.311 is new and would require the manufacturer to include with each motor assembly bearing an MSHA approval marking, a list of items that should be checked by the user to ensure the motor assembly is maintained in

approved condition. This is consistent with existing checklist requirements contained in §§ 7.51 and 7.71 of part 7.

B. Section-by-Section Discussion of Part 18

Part 18 includes various provisions by which MSHA can allow variations in design in the evaluation and testing of explosion proof enclosures. Under these provisions MSHA can evaluate certain variations in designs based upon its experience, engineering judgment and testing results. This flexibility exists in part 18, but is not appropriate in a part 7 subpart. As a result, some specific modifications to part 18 requirements have been proposed for incorporation into part 7 requirements, but not part 18. Those modifications judged appropriate for inclusion as part 18 requirements and that are necessary to make part 18 consistent with proposed subpart J of part 7 are discussed below.

Section 18.4 Equipment for Which Approval Will Be Used

This section would be revised to specify that components approved under part 7 would also be acceptable for incorporation in the assembly of a complete machine or accessory.

Section 18.24 Electrical clearances

This section would be revised to establish specific minimum clearance distances based upon the voltage of the energized parts. It would specify these minimum distances to define the adequacy of spacing required under the existing section. The minimums would be applicable to the distance between uninsulated electrical conductor surfaces or between uninsulated electrical conductor surfaces and grounded metal surfaces within the enclosure. These proposed minimum clearances are the result of an engineering study performed in conjunction with high voltage studies at MSHA's Approval and Certification Center.

Section 18.31 Enclosures-Joints and Fastenings

Paragraph (a)(3) would be revised to change the maximum allowable magnesium content of external rotating parts constructed of aluminum alloys to 0.6 percent from the existing limit of 0.5 percent. As stated in the preceding preamble discussion for proposed § 7.304(g)(3), this would be consistent with MSHA policy.

Paragraph (a)(5) would be revised to change the Class 1 thread terminology of the existing requirement to the present Class 1A and 1B terminology, consistent with that proposed for § 7.304(g)(4).

Paragraph (a)(6) would be revised for consistency with proposed subpart J of part 7. The introductory paragraph would be changed to include an explanation of "internal volume of an empty enclosure." This explanation would be expanded to include the parts necessary for use (operation), making it consistent with MSHA's existing policy.

The proposal would identify the internal free volume of an empty enclosure as that remaining after the volume of any part that is essential to maintaining the explosion-proof integrity of the enclosure or necessary for operation. Essential parts would include the parts that constitute the flame-arresting path as well as those necessary to secure the parts that constitute the flame-arresting path. This explanation is important because the volume of the enclosure defines the minimum design requirements of the explosion-proof enclosure. The interpretation of "volume of empty enclosure" currently used would be retained for the construction requirements in § 18.31.

The tabulated construction requirements would be modified in several areas. The requirements for minimum thickness of material for flanges and cover would be combined into one category. This change would represent a format change only, since the technical requirements would be unchanged. The maximum bolt spacing requirements for joints all in one plane would be modified to include the requirement for "a minimum of 4 bolts" to be used in the category of "more than 124 cu. ins." of volume. This modification would clarify the Agency's belief and experience that the minimum of 4 bolts are necessary regardless of the enclosure's volume or the configuration of the parts forming the joints.

The cylindrical joint portion of the table would also include several modifications. The maximum clearance along shafts centered by ball or roller bearings would be expressed in terms of diametrical rather than radial dimensions for clarity. The parts that constitute these fits are generally expressed in terms of diametrical rather than radial dimensions.

The categories of "shafts through journal bearings" and "other than shafts" would be combined into a single classification of "other cylindrical joints." The clearances specified would be the diametrical equivalent for the radial clearances listed in existing § 18.31(a)(6) for shafts through journal bearings. Except as discussed below, the contents of the footnotes of § 18.31(a)(6) would be retained.

Footnote 3 is derived from existing § 18.34(a)(6) and includes the requirement to deduct the width of oil grooves and grooves for oil seals in measuring the widths of flame-arresting paths. This provision would be expanded to include any groove because the minimum flame-path length would still be required to be met.

Footnote 7 would be added to specify clearance and location requirements for steel dowel pins. These pins are generally used in cover flanges to aid in aligning the covers. These requirements would be consistent with current policy.

Footnote 11, which is new, would specify that the maximum clearance applies only when the fastening is located within the flamepath. It would clarify when the specification in the table is applicable.

Footnote 12 would be added to state that the edge of the fastening hole must include the edge of any machining done to the fastening hole, such as chamfering. This is consistent with existing policy and would be added for clarification.

Paragraph (a)(7) of § 18.31 is new and would specify the acceptable location of o-rings in a flame-arresting path. When o-rings are installed current policy requires these locations to permit checking of flame-path fits without interference from o-rings. This proposed requirement is based upon the Agency's field experience. Figures J–2, J–3, J–4 and J–5 in the appendix to subpart J of part 7 are included to clarify the required locations for o-rings.

Section 18.32 Fastenings—Additional Requirements

Paragraph (i) would be added to allow for the use of coil-threaded inserts in holes for fastenings, provided they have conventional screw threads, the holes for the inserts are drilled and tapped to the insert manufacturer's specifications, and the insert is long enough to ensure the required minimum thread engagement of the fastening in the insert. Although not addressed in existing part 18, as a result of evaluation and testing by MSHA, current policy permits their use. This provision would allow correction of damaged threads for fastenings securing flame-path parts that could lead to the expulsion of flames and/or hot gases due to an internal explosion.

Section 18.33 Finish of Surface Joints

This section would be revised by clarifying that the final surface must not promote the adherence of foreign materials. This would clarify the type of preparation that might be used to inhibit

rusting. The addition of foreign particles to a flamepath is not desirable because it could interfere with maintaining the proper clearance to prevent the escape of flame and/or hot gases.

Section 18.34 Motors

This section would be revised by adding an introductory paragraph to specify that explosion-proof electric motor assemblies intended for use in approved equipment in underground mines that are addressed by part 7 are to be approved under part 7. Explosion-proof motor assemblies incorporating designs not specifically addressed under part 7 would continue to be submitted for acceptance or certification under part 18. Those motor assembly designs that, for example, contain devices for ventilation, pressure relief and drainage would continue to be evaluated under part 18. In addition, designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology would also be addressed under part 18. These designs are not being covered under proposed subpart J of part 7 because their acceptance by MSHA requires an individual evaluation of design and performance tests. Designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology would also require evaluation on an individual basis.

Paragraph (a)(6) would be revised by deleting the present wording "The widths of oil grooves and grooves for holding oil seals will be deducted in measuring the widths of flame-arresting paths," as this requirement would be incorporated into footnote 3 of § 18.31(a)(6). The wording of the present "note" would be retained as removing the oil seals is standard practice on motors submitted for testing.

Section 18.37 Lead Entrances

Paragraph (b) would be revised to provide for a minimum of three effective engagement threads for the packing gland nut. This minimum engagement is addressed by current policy. It was developed to define what the minimum thread engagement is for adequate mechanical strength.

Section 18.62 Tests to Determine Explosion-Proof Characteristics

Paragraph (a) of § 18.62 would be revised with respect to the definition of coal dust used in the explosion tests. The existing identification of "Pittsburgh bed coal dust" of § 18.62(a) would be replaced by a minimum volatile matter and BTU content. This change would allow equivalent coal from other coal seams to be used in the tests. The requirement that the coal be ground to a fineness of minus 200 mesh would be maintained.

Derivation Table

The following derivation tables list: (1) Each section number of the proposed rule (Proposed Section); and (2) The section number of the existing standard from which the proposed section is derived (Existing Section).

DERIVATION TABLE—PART 7

Proposed section	Existing section
7.301	18.1
7.302	18.2
7.303	18.6(a)
7.304(a)	18.47
7.304(b)	18.23
7.304(c)	18.24
7.304(d)	18.34(a)(4)
7.304(e)	18.34(a)(6)
7.304(f)	18.34(a)(8)
7.304(g)(1)	18.31(a)(1)
7.304(g)(2)	18.31(a)(2)
7.304(g)(3)	18.31(a)(3) and 18.26
7.304(g)(4)	18.31(a)(5)
7.304(g)(5)	18.33
7.304(g)(6)	18.34(c)
7.304(g)(7)	18.32(b)
7.304(g)(8)	18.32(c)
7.304(g)(9)	18.32(d) and 18.34(a)(9)
7.304(g)(10)	18.32(d)
7.304(g)(11)	18.34(b)
7.304(g)(12)	New
7.304(g)(13)	18.32(e)
7.304(g)(14)	18.32(f)
7.304(g)(15)	18.29(c)
7.304(g)(16)	New
7.304(g)(17)	New
7.304(g)(18)	18.31(a)(5)
7.304(g)(19)	18.31(a)(6) and 18.34(d)
7.304(h)	18.37
7.304(i)	18.25
7.305	New
7.306	18.62
7.307	New
7.308	New
7.309	18.13
7.310	New
7.311	New

DERIVATION TABLE—PART 18

Proposed section	Existing section
18.4	18.4
18.24	18.24
18.31(a)(3)	18.31(a)(3)
18.31(a)(5)	18.31(a)(5)
18.31(a)(6)	18.31(a)(6) and 18.34(a)(6)
18.31(a)(7) and 18.32(i)	New
18.33	18.33
18.34	18.34
18.37(b)	18.37(b)
18.62(a)	18.62(a)

Distribution Table

The following distribution tables list: (1) Each section number of the existing part 18 standard (Existing Section); and (2) Each section number of the proposed rule (Proposed Section). Unless indicated in the part 18 Distribution Table, the existing sections of part 18 are maintained.

Existing section	Proposed section
18.1	7.301
18.2	7.302
18.6	7.303
18.13	7.309
18.23	7.304(b)
18.24	7.304(c)
18.25	7.304(i)
18.26	7.304(g)(3)
18.29(c)	7.304(g)(15)
18.31(a)(1)	7.304(g)(1)
18.31(a)(2)	7.304(g)(2)
18.31(a)(3)	7.304(g)(3)
18.31(a)(5)	7.304(g)(4) and (18)
18.31(a)(6)	7.304(g)(19)
18.32(b)	7.304(g)(7)
18.32(c)	7.304(g)(8)
18.32(d)	7.304(g)(9) and (10)
18.32(e)	7.304(g)(13)
18.32(f)	7.304(g)(14)
18.33	7.304(g)(5)
18.34(a)(4)	7.304(d)
18.34(a)(6)	7.304(e)
18.34(a)(8)	7.304(f) and 7.304(g)(10)
18.34(b)	7.304(g)(11)
18.34(c)	7.304(g)(6)
18.34(d)	7.304(g)(19)
18.37	7.304(h)
18.47	7.304(a)
18.62	7.306

DISTRIBUTION TABLE—PART 18

Existing section	Proposed section
18.4	18.4
18.24	18.24)
18.31(a)(3)	18.31(a)(3)
18.31(a)(5)	18.31(a)(5)
18.33	18.33
18.34	18.31(a)(6) and 18.34
18.37(b)	18.37(b)
18.62(a)	18.62(a)

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared a Preliminary Regulatory Impact Analysis (PRIA). MSHA has determined that the proposal would not result in major cost increases nor have an incremental effect of $100 million or more on the economy. This PRIA has also formed the basis for the analysis required by the Regulatory Flexibility Act. The Regulatory Flexibility Act requires that, in

developing regulatory proposals, agencies evaluate compliance alternatives that minimize any adverse impact on small businesses. Proposed subpart J would clarify the standards that industry must meet for approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. MSHA designed its product testing requirements to be as performance oriented as possible to allow manufacturers to choose the most effective option. Performance-oriented standards should benefit both large and small manufacturers.

The proposal would increase private-sector involvement in the approval of mining products. For the first time, in lieu of testing only by MSHA, the applicant or a third party selected by the applicant would test explosion-proof electric motor assemblies. The Agency anticipates that this new procedure would in some cases reduce associated testing costs and potential delay in product approvals.

MSHA estimates that the total annual compliance cost to electric motor assembly manufacturers under the existing rule is about $88,500. The total annual compliance cost under the proposal would be about $105,900. The major difference between these two is the cost associated with the requirements for annual product audits and quality assurance procedures. Even though there are many small firms, MSHA lacks data on them to identify the potential impact on small entities.

MSHA estimates that the annual compliance cost increase due to the provisions of subpart J would be about $33,720; but, there would be an offsetting cost reduction of about $16,370. The total annual incremental cost increase, therefore, would be about $17,350. The post-approval product audit and MSHA expenses to witness initial manufacturer or third-party testing would generate about 75% of the costs. Less costly testing and evaluation procedures would provide 76% of the cost reduction. The following table summarizes MSHA's estimates of the compliance cost impact of the existing and proposed rules.

SUMMARY OF ANNUAL COMPLIANCE COSTS FOR THE PROPOSED RULE FOR APPROVAL OF ELECTRIC MOTOR ASSEMBLIES

Provision	Current [1]	Proposed	Difference
MSHA Fees	$63,741	56,920	($6,821)
Application Procedure	2,787	2,787	0
Testing Procedures:			
Testing	18,832	12,424	(6,408)
Shipping Motors	3,142	0 [2]	(3,142)
Travel to Observe	0	12,267	12,267
Quality Assurance Procedures:			
Inspections	0	7,694	7,694
Reporting Defects	0	369	369
Post-Approval Audits	0	13,000	13,000
Approval Checklist	0	394	394
Total	$88,501	105,855	$17,354

[1] Costs are based on full compliance with the existing requirements.
[2] Some manufacturers lack in-house testing facilities and may have to ship their assemblies to an appropriate test site.

This proposed rule would not significantly alter the existing technical requirement for electric motor assemblies. Any necessary testing of products required by MSHA either is not substantially different from that currently undertaken or does not impose significant costs compared to the sales value of the product. The annual incremental compliance cost impact for those 40 manufacturing firms, which MSHA expects to be affected by the proposal, is about $430 per firm.

MSHA lacks data on the number of manufacturing firms that currently have in-house testing facilities and conduct their own testing of electric motor assemblies. MSHA requests specific data on the nature and extent of the use of in-house testing facilities in the affected firms. MSHA also requests data on the availability and costs of third-party testing facilities.

V. Executive Order 12612

The Agency has reviewed the final rule in accordance with Executive Order 12612 regarding federalism and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under this Executive Order.

VI. Metric Measurements

Under section 5164 of the Omnibus Trade and Competitiveness Act of 1988, MSHA intends to begin providing both metric and English specifications in its rules to assist industry in converting to metric measurements where appropriate. MSHA requests comments on the availability of metric equipment and supplies and metric nominal safety equivalences of the English inch-pound measurements in this proposed rule.

List of Subjects in 30 CFR Parts 7 and 18

Approval of equipment, Mine safety and health, Underground mining.

Dated: February 27, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

It is proposed that subchapter B, chapter I, title 30 of the Code of Federal Regulations be amended as follows:

PART 7—TESTING BY APPLICANT or THIRD PARTY

1. The authority citation for part 7 continues to read as follows:

Authority: 30 U.S.C. 957

Subparts E–I [Added and Reserved]

2. By adding and reserving subparts E through I to part 7.

3. A new subpart J is added to part 7 to read as follows:

Subpart J—Electric Motor Assemblies

Sec.

Appendix I to Subpart J—Figures J–1 through J–14

Subpart J—Electric Motor Assemblies

§ 7.301 Purpose and effective date.

This subpart establishes the specific requirements for MSHA approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. Application for approval or extensions of approval submitted after (insert date two years after effective date of this subpart) shall meet the requirements of this part. Those motors that incorporate features not specifically addressed in this subpart will continue to be evaluated under part 18 of this chapter.

§ 7.302 Definitions.

The following definitions apply in this subpart:

Afterburning. The combustion of any flammable mixture that is drawn into an enclosure after an internal explosion in the enclosure. This condition is determined through detection of secondary pressure peaks occurring subsequent to the initial explosion.

Cylindrical joint. A joint comprised of two contiguous, concentric, cylindrical surfaces.

Explosion-proof enclosure. A metallic enclosure used as a winding compartment, conduit box, or a combination of both that complies with the applicable requirements of § 7.304 of this part and is constructed so that it will withstand the explosion tests of § 7.306 of this part.

Fastening. A bolt, screw, or stud used to secure adjoining parts to prevent the escape of flame from an explosion-proof enclosure.

Flame-arresting path. Two or more adjoining or adjacent surfaces between which the escape of flame is prevented.

Internal free volume (of an empty enclosure). The volume remaining after deducting the volume of any part that is essential in maintaining the explosion-proof integrity of the enclosure or necessary for operation of the motor. Essential parts include the parts that constitute the flame-arresting path and those necessary to secure parts that constitute a flame-arresting path.

Motor assembly. The winding compartment including a conduit box when specified. A motor assembly is comprised of one or more explosion-proof enclosures.

Plane joint. A joint comprised of two adjoining surfaces in parallel planes.

Step (rabbet) joint. A joint comprised of two adjoining surfaces with a change or changes in direction between its inner and outer edges. A step joint may be composed of a cylindrical portion and a plane portion or of two or more plane portions.

Stuffing box. An entrance with a recess filled with packing material for cables extending through a wall of an explosion-proof enclosure.

Threaded joint. A joint consisting of a male- and a female-threaded member, both of which are the same type and gauge.

§ 7.303 Application requirements.

(a) An application for approval of a motor assembly shall include a composite drawing or drawings with the following information:

(1) Model (type), frame size, and rating of the motor assembly.

(2) Overall dimensions of the motor assembly, including conduit box if applicable, and internal free volume.

(3) Material and quantity for each of the component parts that form the explosion-proof enclosure or enclosures.

(4) All dimensions (including tolerances) and specifications required to ascertain compliance with the requirements of § 7.304 of this part.

(b) All drawings shall be titled, dated, numbered, and include the latest revision.

§ 7.304 Technical requirements.

(a) Voltage rating of the motor shall not exceed 4160 volts.

(b) The temperature of the external surfaces of the motor assembly shall not exceed 150 °C (302 °F) when operated at the manufacturers' specified ratings.

(c) Minimum clearances between uninsulated electrical conductor surfaces, or between uninsulated conductor surfaces and grounded metal surfaces, within the enclosure shall meet the requirements of table J–1 of this section.

TABLE J–1.—MINIMUM CLEARANCES BETWEEN UNINSULATED SURFACES

Phase-to-phase voltage (rms)	Clearances (inches)	
	Phase-to-phase	Phase-to-ground or control circuit
0 to 999	0.5	0.25
1000 to 2400	1.4	0.6
2401 to 4160	3.0	1.4

(d) Parts whose dimensions can change with the motor operation, such as ball and roller bearings and oil seals, shall not be used as flame-arresting paths.

(e) The widths of any grooves, such as grooves for holding oil seals or o-rings, shall be deducted in measuring the widths of flame-arresting paths.

(f) An outer bearing cap shall not be considered as forming any part of a flame-arresting path unless the cap is used as a bearing cartridge.

(g) Requirements for explosion-proof enclosures of motor assemblies.

(1) Enclosures shall be—

(i) Constructed of metal;

(ii) Designed to withstand a minimum internal pressure of 150 pounds per square inch (gauge);

(iii) Free from blowholes when cast; and

(iv) Explosion-proof as determined by the tests set out in § 7.306 of this part.

(2) Welded joints forming an enclosure shall be—

(i) Continuous and gas-tight; and

(ii) Made in accordance with or exceed the American Welding Society Standards D14.4–77 or meet the test requirements set out in § 7.307 of this part.

(3) External rotating parts shall not be constructed of aluminum alloys containing more than 0.6 percent magnesium. Non-metallic rotating parts shall be provided with a means to prevent an accumulation of static electricity.

(4) Threaded covers and mating parts shall be designed with Class 1A and 1B (coarse, loose fitting) threads. The covers shall be secured against lossening.

(5) Flat surfaces between fastening holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in paragraph (g)(19) of this section. All surfaces forming a flame-arresting path shall be finished during the manufacturing process to not more than 250 microinches. A thin film of non-hardening preparation to inhibit rusting may be applied to these finished metal surfaces as long as the final surface does not promote the adherence of foreign materials.

(6) For a laminated stator frame, it shall be impossible to insert a 0.0015 inch thickness gauge to a depth exceeding ⅛ inch between adjacent laminations or between end rings and laminations.

(7) Lockwashers, or equivalent, shall be provided for all fastenings. Devices other than lockwashers shall meet the requirements of § 7.308 of this part. Equivalent devices shall only be used in the configuration in which they were tested.

(8) Fastenings shall be as uniform in size as practicable to preclude improper installation.

(9) Holes for fastenings in an explosion-proof enclosure shall be

threaded to ensure that all specified bolts or screws will not bottom even if the washers are omitted.

(10) Holes for fastenings shall not penetrate to the interior of an explosion-proof enclosure, except holes made through motor casings for bolts, studs, or screws to hold essential parts, such as pole pieces, brush rigging, and bearing catridges. The attachments of such parts shall be secured against loosening. The treaded holes in these parts shall be blind unless the fastenings are inserted from the inside, in which case the fastenings shall not be accessible with the rotor in place.

(11) For direct current motor assemblies with narrow interpoles, the distance from the edge of the pole piece to any bolt hole in the frame shall be at least ⅛ inch. If the distance is ⅛ to ¼ inch, the diametrical clearance for the pole bolt shall not exceed 1/64 inch for not less than ½ inch through the frame. Furthermore, the pole piece shall have the same radius as the inner surface of the frame. Pole pieces may be shimmed as necessary. If used, the total resulting thickness of the shims shall be specified. The shim assembly shall meet the same requirements as the pole piece.

(12) Coil-thread inserts, if used in holes for fastenings, shall meet the following:

(i) The inserts shall have internal screw threads.

(ii) The holes for the inserts shall be drilled and tapped to the insert manufacturer's specifications.

(iii) The inserts shall be installed according to the insert manufacturer's specifications.

(iv) The insert shall be of sufficient length to ensure the minimum thread engagement of fastening specified in paragraph (g)(19) of this section.

(13) A minimum of ⅛" of stock shall be left at the center of the bottom of each blind hole that could penetrate into the interior of an explosion-proof enclosure.

(14) Fastenings shall be used only for attaching parts that are essential in maintaining the explosion-proof integrity of the enclosure, or necessary for the operation of the motor. They shall not be used for making electrical connections.

(15) Through holes not in use, shall be closed with a metal plug. Plugs, including eyebolts, in through holes where future access is desired shall meet the flame-arresting paths, lengths, and clearances of paragraph (g)(19) of this section and be secured by spot welding or brazing. The spot weld or braze may be on a plug, clamp, or fastening (for example see figure J–1). Plugs for holes where future access is not desired shall be secured all around by a continuous gas-tight weld.

(16) O-rings, if used in a flame-arresting path, shall meet the following:

(i) When the flame-arresting path is in one plane, the o-ring shall be located at least one-half the acceptable flame-arresting path length specified in paragraph (g)(19) of this section within the outside edge of the path (see figure J–2).

(ii) When the flame-arresting path is one of the plane-cylindrical type (step joint), the o-ring shall be located at least ½ inch within the outer edge of the plane portion (see figure J–3), or at the junction of the plane and cylindrical portion of the joint (see figure J–4); or in the cylindrical portion (see figure J–5).

(17) Mating parts comprising a pressed fit shall result in a minimum interference of 0.001" between the parts. The minimum length of the pressed fit shall be equal to the minimum thickness requirement of paragraph (g)(19) of this section for the material in which the fit is made.

(18) The flame-arresting path of threaded joints shall conform to the requirements of paragraph (g)(19) of this section.

(19) Explosion-proof enclosures shall meet the requirements set out in table J–2 of this section, based on the internal free volume of the empty enclosure.

TABLE J-2.—EXPLOSION-PROOF REQUIREMENTS BASED ON VOLUME

[In inches]

	Volume of empty enclosure		
	Less than 45 cu. ins.	45 to 124 cu. ins. inclusive	More than 124 cu. ins.
Minimum thickness of material for walls	⅛	3/16	¼
Minimum thickness of material for flanges and covers	[1] ¼	[2] ⅜	[2] ½
Minimum width of joint; all in one plane	½	¾	1
Maximum clearance; joint all in one plane	0.002	0.003	0.004
Minimum width of joint, portions of which are in different planes; cylinders or equivalent	⅜	⅝	¾
Maximum clearances; joint in two or more planes, cylinders or equivalent: [4]			
(a) Portion perpendicular to plane [5]	0.008	0.008	0.008
(b) Plane portion	0.006	0.006	0.006
Maximum fastening [6,7] spacing; joints all in one plane: 6 inches with a minimum of 4 fastenings			
Maximum fastening spacing; joints, portions of which are in different planes: 8 inches with a minimum of 4 fastenings			
Minimum diameter of fastening [8] (without regard to type of joint)	¼	¼	⅜
Minimum thread engagement of fastening [9]	¼	¼	⅜
Maximum diametrical clearance between fastening body and unthreaded holes through which it passes [7,10]	1/64	1/32	1/16
Minimum distance from interior of enclosure to the edge of a fastening hole: [7,11]			
Joint—minimum width 1			[12] 7/16
Joint—less than 1" wide	⅛	3/16	
Cylindrical Joints			
Shaft centered by ball or roller bearings:			
Minimum length of flame-arresting path	½	¾	1
Maximum diametrical clearance	0.020	0.025	0.030
Other cylindrical joints: [13]			
Minimum length of flame-arresting path	½	¾	1
Maximum diametrical clearance	0.006	0.008	0.010

[1] 1/32 inch less is allowable for machining rolled plate.
[2] 1/16 inch less is allowable for machining rolled plate.
[3] If only two planes are involved, neither portion of a joint shall be less than ⅛ inch wide, unless the wider portion conforms to the same requirements as those for a joint that is all in one plane. If more than two planes are involved (as in labyrinths or tongue-and-groove joints) the combined lengths of those portions having prescribed clearances are considered.

[4] For winding compartments having internal free volume not exceeding 350 cubic inches and joints not exceeding 32 inches in outer circumference and provided with step joints between the stator frame and the end bracket the following dimensions shall apply:

DIMENSIONS OF RABBET (STEP) JOINTS—INCHES

[See figure J-6 in appendix]

Minimum total width	Minimum width of clamped radial portion	Maximum clearance of radial portion	Maximum diametrical clearance at axial portion
⅜	5/64	0.0015	0.003
½	7/64	0.002	0.003
½	9/32	0.002	0.004

[5] The allowable diametrical clearance is 0.006 inch when the portion perpendicular to the plane portion is ¼ inch or greater in length. If the perpendicular portion is more than ⅛ inch but less than ¼ inch wide, the diametrical clearance shall not exceed 0.006 inch.

[6] Studs, when provided, shall bottom in blind holes, be completely welded in place, or have the bottom of the hole closed with a plug secured by weld or braze. Fastenings shall be provided at all corners.

[7] The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the explosion-proof enclosure apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 5 inches.

[8] Fastening diameters smaller than specified may be used if the enclosure meets the test requirements of 30 CFR 7.307 and then 7.306 in that order.

[9] Minimum thread engagement shall be equal to or greater than the diameter of the fastening specified, or the enclosure must meet the test requirements of 30 CFR 7.307 and then 7.306 in that order.

[10] This maximum clearance applies only when the fastening is located within the flamepath.

[11] Edge of the fastening hole shall include the edge of any machining done to the fastening hole, such as chamfering.

[12] If the diametrical clearance for fastening does not exceed 1/32 inch, then the minimum distance shall be ¼ inch.

[13] Shafts or operating rods through journal bearings shall not deform during normal operation. The length of the flame-arresting path shall not be reduced when a pushbutton is depressed. Operating rods shall have a shoulder or head on the portion inside the enclosure. Essential parts riveted or bolted to the inside portion are acceptable in lieu of a head or shoulder, but cotter pins and similar devices shall not be used.

(h) *Lead entrances.* (1) Each cable, which extends through an outside wall of the motor assembly, shall pass through a stuffing box lead entrance (see figure J–7). All sharp edges shall be removed from stuffing boxes, packing nuts, and other lead entrance (gland) parts, so that the cable jacket is not damaged.

(2) When the packing is properly compressed, the gland nut shall have—

(i) A clearance distance of ⅛ inch or more to travel without interference by parts other than packing; and

(ii) A minimum of three effective threads engaged (see figures J–8, J–9, and J–10).

(3) Packing nuts (see figure J–7) and stuffing boxes shall be secured against loosening (see figure J–11).

(4) Compressed packing material shall be in contact with the cable jacket for a length of not less than ½ inch.

(5) Requirements for lead entrances in which MSHA accepted rope packing material is specified, are:

(i) Rope packing material shall be acceptable under § 18.37(e) of this chapter.

(ii) The width of the space for packing material shall not exceed by more than 50 percent the diameter or width of the uncompressed packing material (see figure J–12).

(iii) The maximum diametrical clearance, using the specified tolerances, between the cable and the through holes in the gland parts adjacent to the packing (stuffing box, packing nut, hose tube, or bushings) shall not exceed 75 percent of the nominal diameter or width of the packing material (see figure J–13).

(6) Requirements for lead entrances in which grommet packing made of compressible material is specified, are:

(i) The grommet packing material shall be accepted by MSHA as a flame-resistant material under § 18.37(f)(1) of this chapter.

(ii) The diametrical clearance between the cable jacket and the nominal inside diameter of the grommet shall not exceed 1/16 inch, based on the nominal specified diameter of the cable (see figure J–14).

(iii) The diametrical clearance between the nominal outside diameter of the grommet and the inside wall of the stuffing box shall not exceed 1/16 inch (see figure J–14).

(i) Combustible gases from insulating material.

(1) Insulating materials that give off flammable or explosive gases when decomposed electrically shall not be used within explosion-proof enclosures where the materials are subjected to destructive electrical action.

(2) Parts coated or impregnated with insulating materials shall be treated to remove any combustible solvent before assembly in an explosion-proof enclosure.

§ 7.305 Critical characteristics.

The following critical characteristics shall be inspected on each motor assembly to which an approval marking is affixed;

(a) Finish, width, and planarity of surfaces that form any part of a flame-arresting path.

(b) Clearances between mating parts that form flame-arresting paths.

(c) Thickness of walls, flanges, and covers that are essential in maintaining the explosion-proof integrity of the enclosure.

(d) Spacing of fastenings.

(e) Length of thread engagement on fastenings and threaded parts that assure the explosion-proof integrity of the enclosure.

(f) Use of lockwasher or equivalent with all fastenings.

(g) Dimensions which affect compliance with the requirements for packing gland parts in § 7.304 of this part.

§ 7.306 Explosion tests.

(a) The following shall be used for conducting an explosion test:

(1) An explosion test chamber designed and constructed to contain an explosive gas mixture to surround and fill the motor assembly being tested. The chamber must be sufficiently darkened and provide viewing capabilities of the flamepaths to allow observation during testing of any discharge of flame or ignition of the explosive mixture surrounding the motor assembly.

(2) A methane gas supply with at least 98 by volume per centum of combustible hydrocarbons, with the remainder being inert. At least 90 percent by volume of the gas shall be methane.

(3) Coal dust having a minimum of 22 percent dry volatile matter and a minimum heat constant of 11,000 moist BTU (coal containing natural bed moisture but not visible surface water) ground to a fineness of minus 200 mesh U.S. Standard sieve series.

(4) An electric spark ignition source with a minimum of 100 millijoules of energy.

(5) A pressure recording system that will indicate the pressure peaks resulting from the ignition and combustion of explosive gas mixtures within the enclosure being tested.

(b) *General test procedures.* (1) Motor assemblies being tested shall—

(i) Be equipped with unshielded bearings regardless of the type of bearings specified; and

(ii) Have all parts that do not contribute to the operation or assure the explosion-proof integrity of the enclosure, such as, oil, seals, grease fittings, hose conduit, cable clamps, and outer bearing caps (which do not house the bearings) removed from the motor assembly.

(2) Each motor assembly shall be placed in the explosion test chamber and tested as follows:

(i) The motor assembly shall be filled with and surrounded by an explosive mixture of the natural gas supply and air. The chamber gas concentrations shall be between 6.0 by volume per centum and the motor assembly natural gas concentration just before ignition of each test. Each externally visible flamepath fit shall be observed for discharge of flames for at least two of the tests, including one with coal dust added.

(ii) A single spark source is used for all testing. Pressure shall be measured at each end of the winding compartment simultaneously during all tests. Quantity and location of test holes shall permit ignition on each end of the winding compartment and recording of pressure on the same and opposite ends as the ignition.

(iii) Motor assemblies incorporating a conduit box shall have the pressure in the conduit box recorded simultaneously with the other measured pressures during all tests. Quantity and location of test holes in the conduit box shall permit ignition and recording of pressure as required in paragraphs (c)(1) and (c)(4)(i) of this section.

(iv) The motor assembly shall be completely purged and recharged with a fresh explosive gas mixture from the chamber or by injection after each test. The chamber shall be completely purged and recharged with a fresh explosive gas mixture as necessary. The oxgyen level of the chamber gas mixture shall be no less than 18 percent by volume for testing. In the absence of oxygen monitoring equipment, the maximum number of tests conducted before purging shall be less than or equal to the chamber volume divided by forty times the volume occupied by the motor assembly.

(c) *Test procedures.* (1) Eight tests at 9.4 ± 0.4 percent methane by volume within the winding compartment shall be conducted, with the rotor stationary during four tests and rotating at rated speed (rpm) during four tests. The ignition shall be at one end of the winding compartment for two stationary and two rotating tests, and then switched to the opposite end for the remaining four tests. If a non-isolated conduit box is used, then two additional tests, one stationary and one rotating, shall be conducted with ignition in the conduit box at a point furthest away from the opening between the conduit box and the winding compartment.

(2) Four tests at 7.0 ± 0.3 percent methane by volume within the winding compartment shall be conducted with the rotor stationary, 2 ignitions at each end.

(3) Four tests at 9.4 ± 0.4 percent methane by volume plus coal dust shall be conducted. A quantity of coal dust equal to 0.05 ounces per cubic foot of internal free volume of the winding compartment plus the non-isolated conduit box shall be introduced into each end of the winding compartment and non-isolated conduit box to coat the interior surface before conducting the first of the four tests. The coal dust introduced into the conduit box shall be proportional to its volume. The remaining coal dust shall be equally divided between the winding compartment ends. For two tests, one stationary and one rotating, the ignition shall be either in the conduit box or one end of the connected winding compartment, whichever produced the highest pressure in the previous tests. The two remaining tests, one stationary and one rotating, shall be conducted with the ignition in the winding compartment end furthest away from the conduit box.

(4) For motor assemblies incorporating a conduit box which is isolated from the winding compartment by an isolating barrier the following additional tests shall be conducted—

(i) For conduit boxes with an internal free volume greater than 150 cubic inches, two ignition points shall be used, one as close to the geometric center of the conduit box as practical and the other at the furthest point away from the isolating barrier between the conduit box and the winding compartment. Recording of pressure shall be on the same and opposite sides as the ignition point furthest from the isolating barrier between the conduit box and the winding compartment. Conduit boxes with an internal free volume of 150 cubic inches or less shall have one test hole for ignition located as close to the geometric center of the conduit box as practical and one for recording of pressure located on a side of the conduit box.

(ii) The conduit box shall be tested separately. Six tests at 9.4 ± 0.4 percent methane by volume within the conduit box shall be conducted followed by two tests at 7.0 ± 0.3 percent methane by volume. Then two tests at 9.4 ± 0.4 percent methane by volume with a quantity of coal dust equal to 0.05 ounces per cubic foot of internal free volume of the conduit box and meeting the specifications in paragraph (c)(3) of this section shall be conducted. For conduit boxes with an internal free volume of more than 150 cubic inches, the number of tests shall be evenly divided between each ignition point.

(iii) The motor assembly shall be tested following removal of the isolating barrier or one sectionalizing terminal (as applicable). Six tests at 9.4 ± 0.4 percent methane by volume in the winding compartment and conduit box shall be conducted using three ignition locations. The ignition shall be at one end of the winding compartment for one stationary and one rotating test; the opposite end for one stationary and one rotating test; and at the ignition point that produced the highest pressure on the previous test in paragraph (c)(4)(ii) of this section in the conduit box for one stationary and one rotating test. Motor assemblies that use multiple sectionalizing terminals shall have one test conducted as each additional terminal is removed. Each of these tests shall use the rotor state and ignition location that produced the highest pressure in the previous tests.

(d) A motor assembly incorporating a conduit box that is isolated from the winding compartment that exhibits pressures exceeding 110 psig, while testing during removal of any or all isolating barriers as specified in paragraph (c)(4) of this section, shall have a warning statement on the approval plate. This statement shall warn that the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly. A statement is not required when the motor assembly has withstood a static pressure of twice the maximum pressure recorded in the explosion tests of paragraph (c)(4) of this section. The static pressure test shall be conducted on the motor assembly with all isolating barriers removed, and in accordance with § 7.307 of this part.

(e) *Acceptable performance.* Explosion tests of a motor assembly shall not result in—

(1) Discharge of flames.

(2) Ignition of the explosive mixture surrounding the motor assembly in the chamber.

(3) Development of afterburning.

(4) Rupture of any part of the motor assembly or any panel or divider within the motor assembly.

(5) Clearances, in excess of those specified in this subpart, along accessible flame-arresting paths, following any necessary retightening of fastenings.

(6) Pressure exceeding 100 psig, except as provided in paragraph (d) of this section unless the motor assembly has withstood a static pressure of twice the maximum pressure recorded in the explosion tests of this section following the static pressure test procedures of § 7.307 of this part.

(7) Permanent deformation greater than 0.040 inches per linear foot.

§ 7.307 Static pressure test.

(a) *Test procedure.* (1) The enclosure shall be internally pressurized to a minimum of 150 psig and the pressure maintained for a minimum of 10 seconds.

(2) Following the pressure hold, the pressure shall be removed and the pressurizing agent removed from the enclosure.

(b) *Acceptable performance.* (1) The enclosure, during pressurization shall not exhibit—

(i) Leakage through welds or casting; or

(ii) Rupture of any part that affects the explosion-proof integrity of the enclosure.

(2) The enclosure following removal of the pressurizing agent, shall not exhibit—

(i) Visible cracks in welds;

(ii) Permanent deformation exceeding 0.040 inches per linear foot; or

(iii) Clearances, in excess of those specified in this subpart, along accessible flame-arresting paths, following any necessary retightening of fastenings.

§ 7.308 Lockwasher equivalency test.

(a) *Test procedure.* (1) Each test sample shall be an assembly consisting of a fastening with a locking device. Each standard sample shall be an assembly consisting of a fastening with a lockwasher.

(2) Five standard samples and five test samples shall be tested.

(3) Each standard and test sample shall use a new fastening of the same specifications as being used on the motor assembly.

(4) A new tapped hole shall be used for each standard and test sample. The hole shall be of the same specifications as used on the motor assembly.

(5) Each standard and test sample shall be inserted in the tapped hole and continuously and uniformly tightened at a speed not to exceed 30 rpm until the fastening's proof load is achieved. The torquing device shall not contact the locking device or the threaded portion of the fastening.

(6) Each standard and test sample shall be engaged and disengaged for 15 full cycles.

(b) *Acceptable performance.* The minimum torque value required to start removal of the fastening from the installed position (minimum breakway torque) for any cycle of any test sample shall be greater than or equal to the average breakway torque of each removal cycle of every standard sample.

§ 7.309 Approval marking.

Each approved motor assembly shall be identified by a legible and permanent approval plate inscribed with the assigned MSHA approval number and a warning statement as specified in § 7.306(d) of this part. The plate shall be securely attached to the motor assembly in a manner that does not impair any explosion-proof characteristics.

§ 7.310 Post-approval product audit.

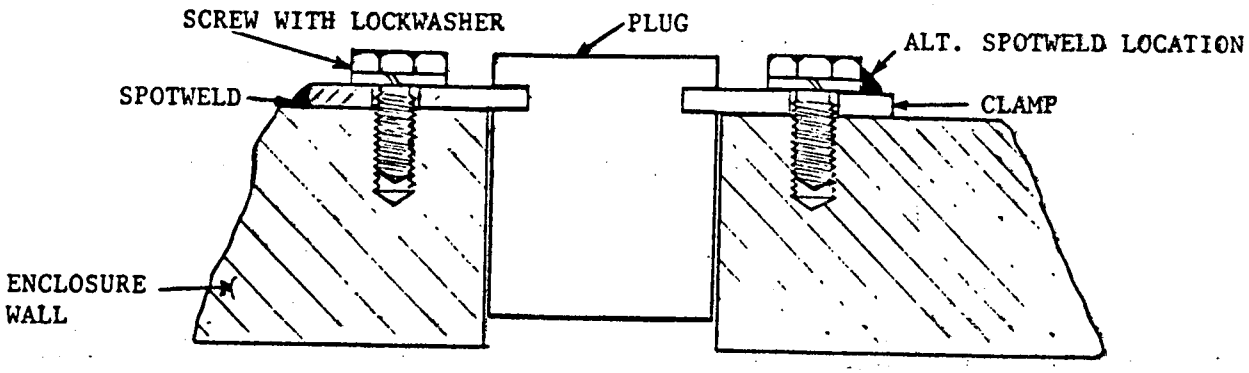
Upon request by MSHA but not more than once a year, except for cause, the approval-holder shall make a motor assembly available for audit at no cost.

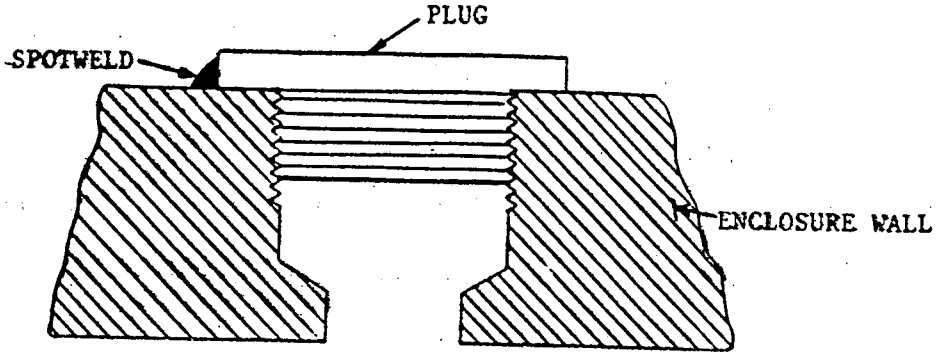
§ 7.311 Approval checklist.

Each motor assembly bearing an MSHA approval marking shall be accompanied by a list of items necessary for maintenance of the motor assembly as approved.

BILLING CODE 4510-43-M

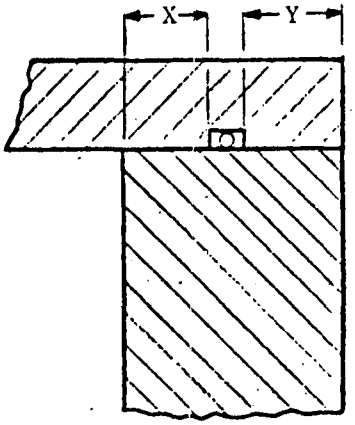
Appendix I to Subpart J—Figures J-1 through J-14





WELD (OR BRAZE) MAY BE ON PLUG, CLAMP, OR FASTENING

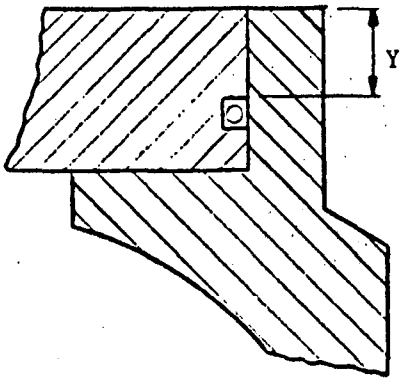
FIGURE J-1



X + Y = MIN. ACCEPTABLE FLAME-ARRESTING PATH LENGTH

$$Y = \frac{X + Y}{2}$$

FIGURE J-2



Y = 1/2" MIN.

FIGURE J-3

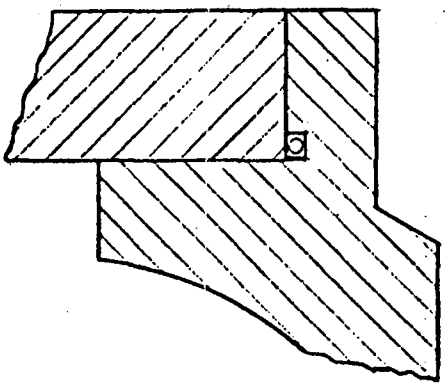
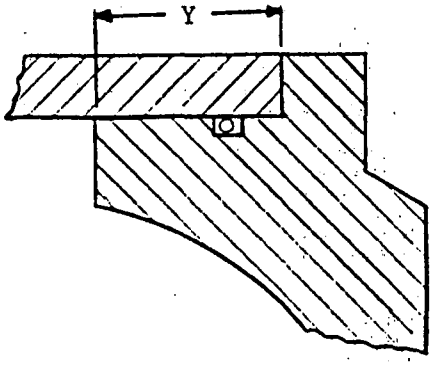
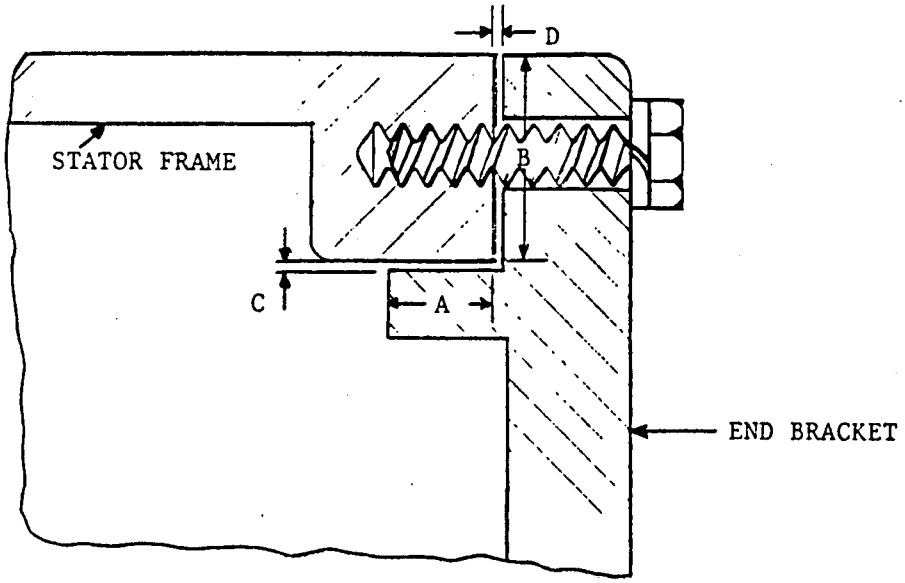


FIGURE J-4



O-RING CAN BE LOCATED ANYWHERE ALONG LENGTH OF (Y).

FIGURE J-5



A = Width of Axial Portion

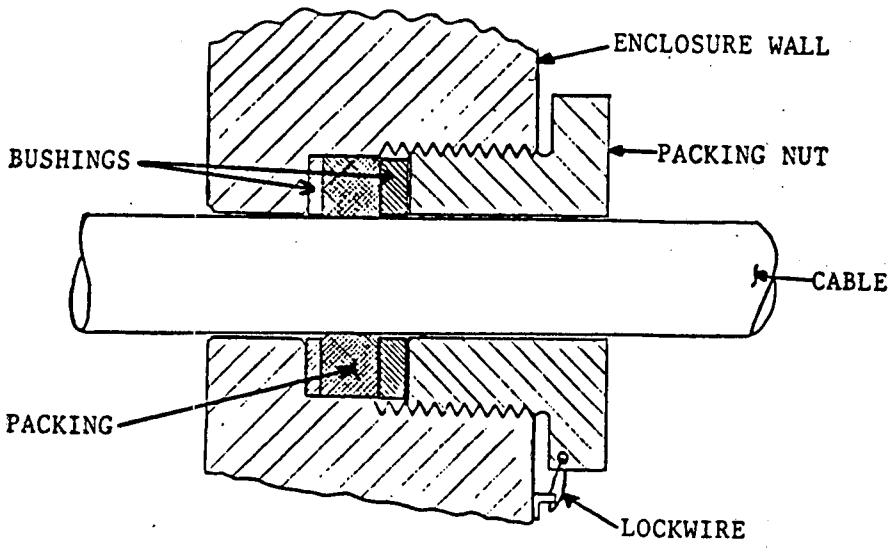
B = Width of Clamped Radial Portion

C = Clearance of Axial Portion

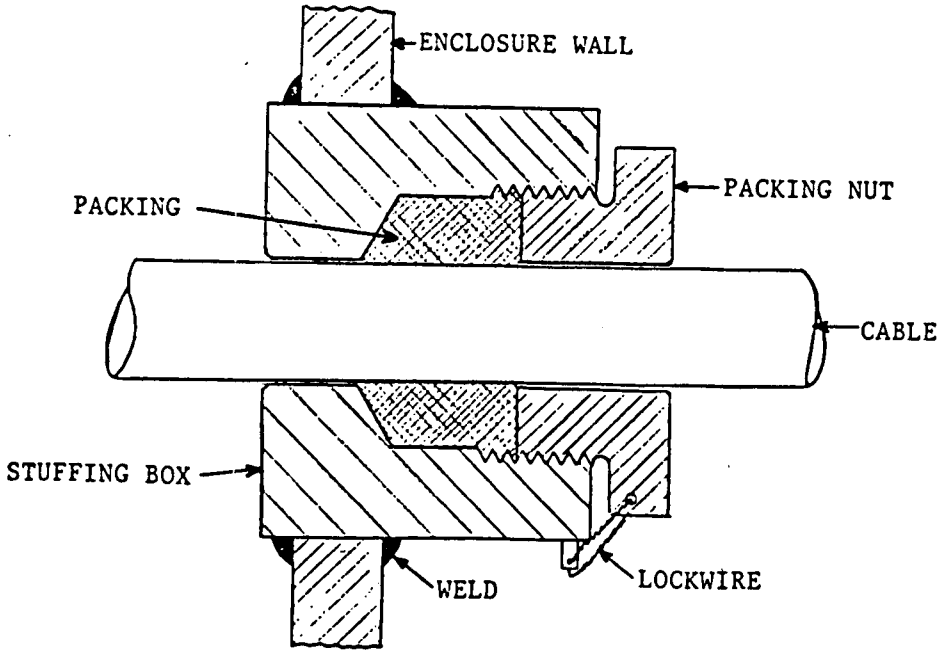
D = Clearance of Radial Portion

Total Width of Flamepath = A + B

FIGURE J-6

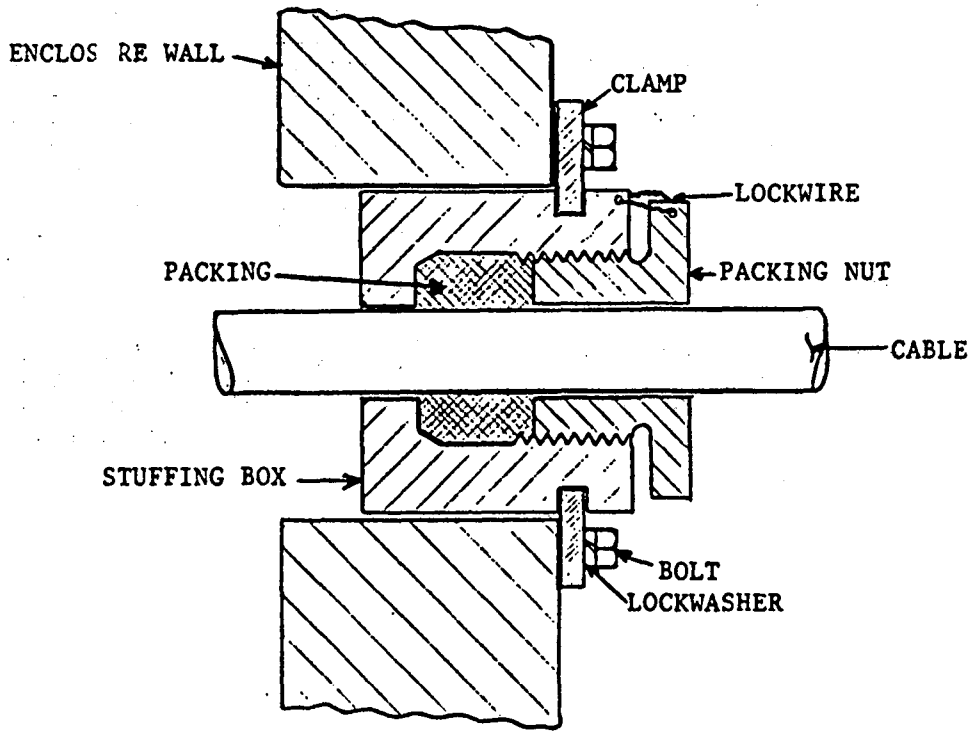


MACHINED-IN STUFFING BOX



WELD-IN STUFFING BOX

FIGURE J-7



SLIP-FIT STUFFING BOX

FIGURE J-7

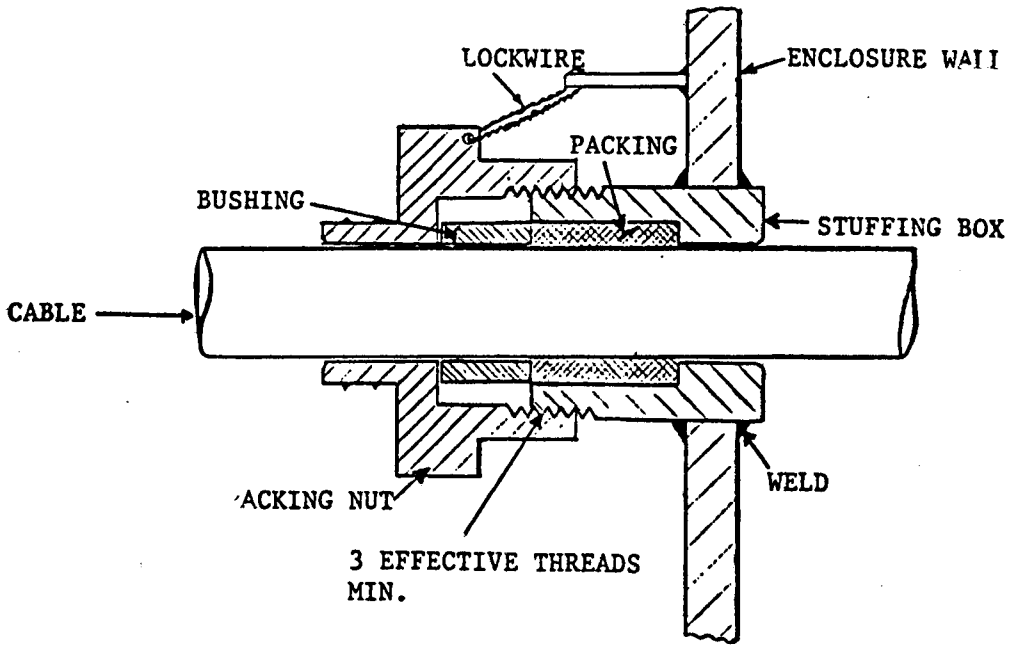


FIGURE J-8

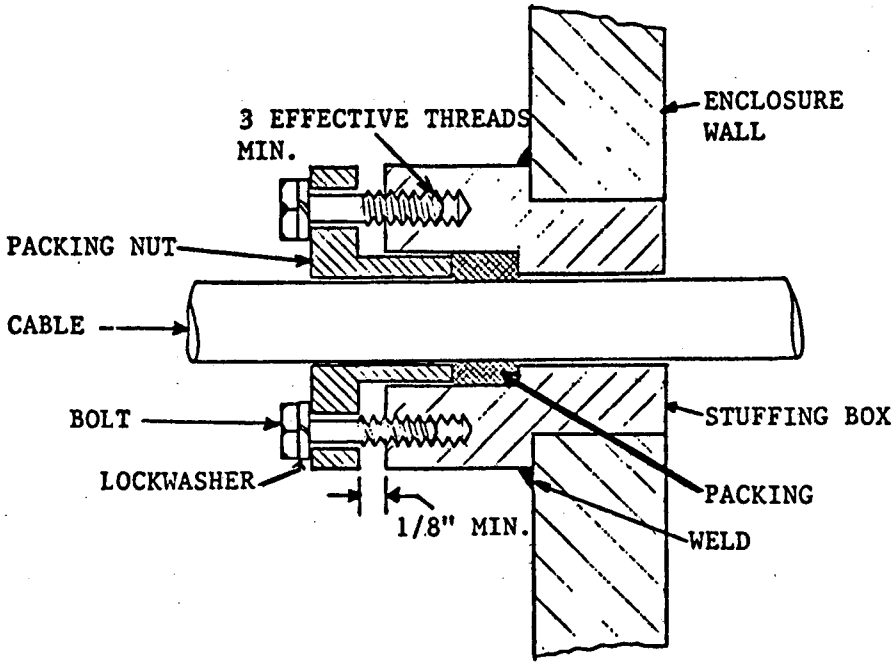


FIGURE J-9

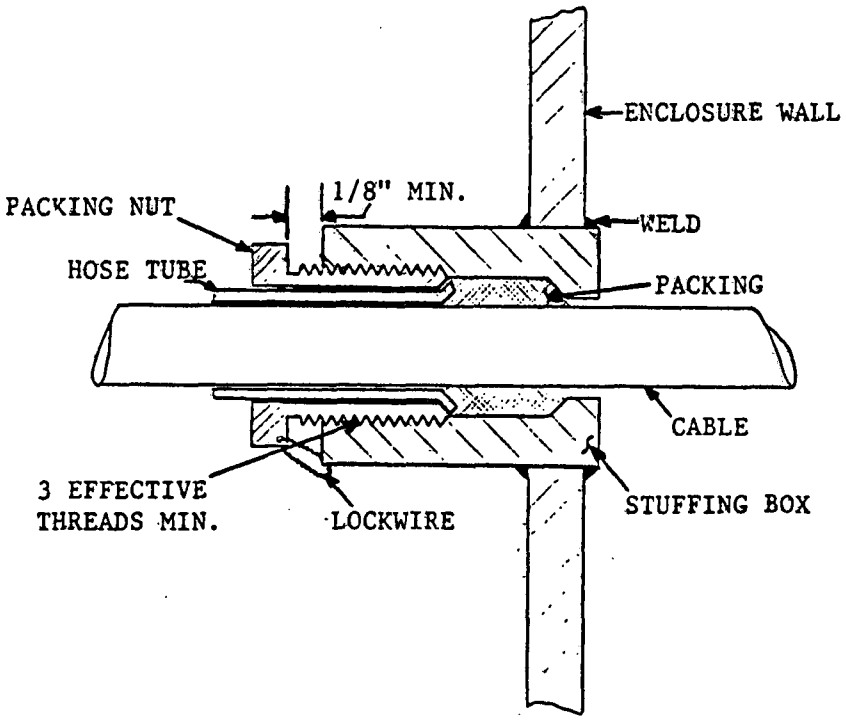

ENCLOSURE WALL
PACKING NUT
1/8" MIN.
WELD
HOSE TUBE
PACKING
CABLE
3 EFFECTIVE
THREADS MIN.
LOCKWIRE
STUFFING BOX

FIGURE J-10

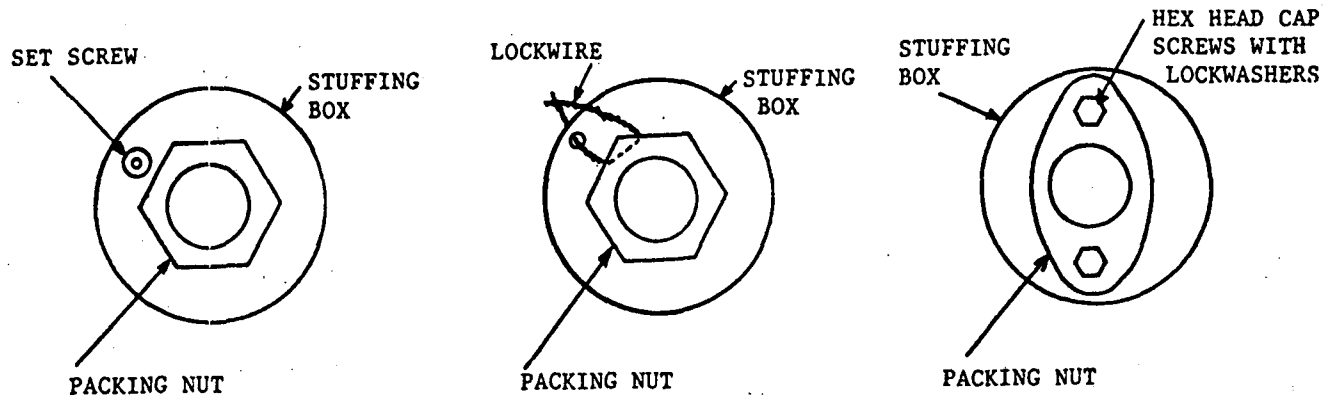
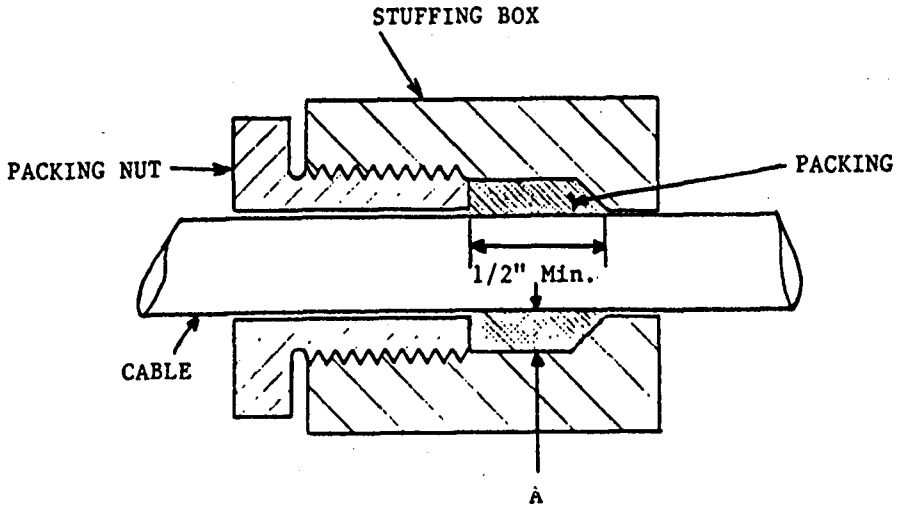
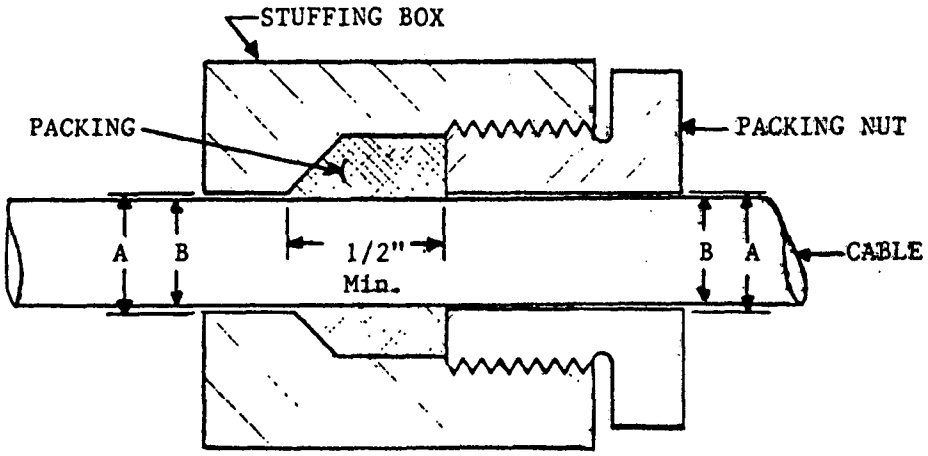


FIGURE J-11



A ≤ 150% of Packing Material Diameter or Width

FIGURE J-12



A - B ≤ 75% of Packing Material Diameter or Width

FIGURE J-13

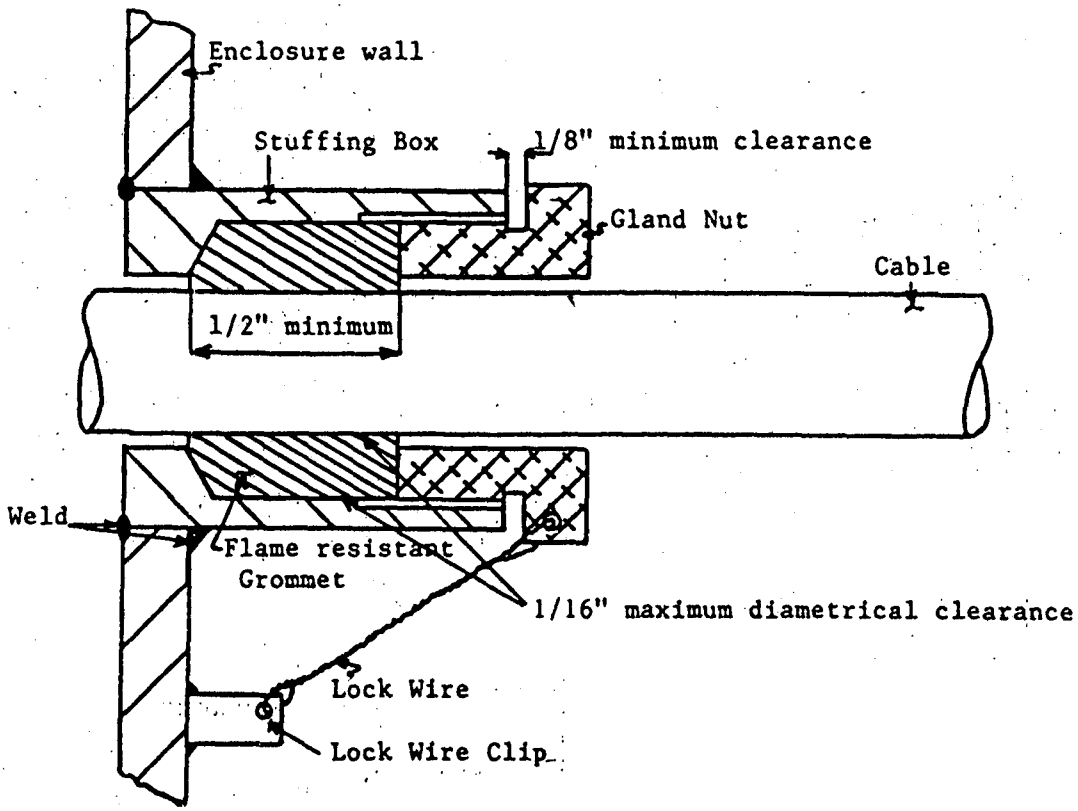


FIGURE J-14

BILLING CODE 4510-43-C

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

2. Section 18.4 is revised to read as follows:

§ 18.4 Electrical equipment for which approval is issued.

An approval will be issued only for a complete electrical machine or accessory. Only components meeting the requirements of subpart B of this part or those approved under part 7 of this chapter, unless they contain intrinsically safe circuits, shall be included in the assemblies.

3. Section 18.24 is revised to read as follows:

§ 18.24 Electrical Clearances.

Minimum clearances between uninsulated electrical conductor surfaces, or between uninsulated conductor surfaces and grounded metal surfaces, within the enclosure shall be as follows:

MINIMUM CLEARANCES BETWEEN UNINSULATED SURFACES

Phase-to-phase voltage (rms)	Clearances (inches)	
	Phase-to-phase	Phase-to-phase or control circuit
0 to 999	0.5	0.25
1000 to 2400	1.4	0.6
2401 to 4160	3.0	1.4

4. In section 18.31 paragraphs (a)(3), (a)(5), and (a)(6) are revised and (a)(7) and (a)(8) are added to read as follows:

§ 18.31 Enclosures-joints and fastenings.

(a) * * * * *

(3) External rotating parts shall not be constructed of aluminum alloys containing more than 0.6 percent magnesium.

* * * * *

(5) Threaded covers and mating parts shall be designed with Class 1A and 1B (coarse, loose fitting) threads. The flame-arresting path of threaded joints shall conform to the requirements of paragraph (a)(6) of this section.

(6) Enclosure requirements shall be based on the internal volumes of the empty enclosure. The internal volume is the volume remaining after deducting the volume of any part that is essential in maintaining the explosion-proof integrity of the enclosure or necessary for operation. Essential parts include the parts that constitute the flame-arresting path and those necessary to secure parts that constitute a flame-arresting path. Enclosures shall meet the following requirements:

EXPLOSION-PROOF REQUIREMENTS ASED ON VOLUME

	Volume of empty enclosure		
	Less than 45 cu. ins.	45 to 124 cu. ins. inclusive	More than 124 cu. ins.
Minimum thickness of material for walls	1/8"	3/16"	1/4"
Minimum thickness of material for flanges and covers	[1] 1/4"	[2] 3/8"	[2] 1/2"
Mininum width of joint; all in one plane[3]	1/2"	3/4"	1"
Maximum clearance; joint all in one plane	0.002"	0.003"	0.004"
Minimum width of joint, portions of which are in different planes; cylinders or equivalent[3,4]	3/8"	5/8"	3/4"
Maximum clearances; joint in two or more planes, cylinders or equivalent:			
(a) Portion perpendicular to plane[5]	0.008"	0.008"	0.008"
(b) Plane portion	0.006"	0.006"	0.006"
Maximum bolt [6,7] spacing; joints all in one plane	6" with a minimum of 4 bolts		
Maximum bolt spacing; joints, portions of which are in different planes	([8])"	([8])"	([8])"
Minimum diameter of bolt (without regard to type of joint)	1/4"	1/4"	3/8"
Minimum thread engagement [9]	1/4"	1/4"	3/8"
Maximum diametrical clearance between bolt body and unthreaded holes through which it passes[7,10,11]	1/64"	1/32"	1/16"
Minimum distance from interior of enclosure to the edge of a bolt hole:[7,12]			
Joint-minimum width 1"			[13] 7/16"
Joint-less than 1"	1/8"	3/16"	
Cylindrical joints			
Staft centered by ball or roller bearings:			
Minimum length of flame-arresting path	1/2"	3/4"	1"
	0.020"	0.025"	0.030"
Other cylindrical joints:[14]			
Mininum length of flame-arresting path	1/2"	3/4"	1"
Maximum diametrical clearance	0.006"	0.008"	0.010"

[1] 1/32 inch less is allowable for machining rolled plate.

[2] 1/16 inches less is allowable for maching rolled plate.

[3] The widths of any grooves, such as grooves for holding oil seals or o-rings, shall be deducted in measuring the widths of flame-arresting paths.

[4] If only two planes are involved, neither portion of a joint shall be less than 1/8 inch wide, unless the wider portion conforms to the same requirements as those for a joint that is all in one plane. If more than two planes are involved (as in labyrinths or tongue-and-groove joints) the combined lengths of those portions having prescribed clearances are considered.

[5] The allowable diametrical clearance is 0.008 inch when the portion perpendicular to the plane portion is 1/4 inch or greater in length. If the perpendicular portion is more than 1/8 inch but less than 1/4 inch wide, the diametrical clearance shall not exceed 0.006 inch.

[6] Where the term "bolt" is used, it refers to a machine bolt or a cap screw, and for either of these studs may be substituted provided the studs, bottom in blind holes, are completely welded in place, or the bottom of the hole is closed with a plug secured by weld or braze. Bolts shall be provided at all corners.

[7] The requirements as to diametrical clearance around the bolt and minimum distance from the bolt hole to the inside of the explosion-proof enclosure apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the bolts on either side of the pin shall not exceed 6 inches.

[8] Adequacy of bolt spacing will be judged on the basis of size and configuration of the enclosure, strength of materials, and explosion test results.

[9] In general, minimum thread engagement shall be equal to or greater than the diameter of the bolt specified.

[10] Threaded holes for fastening bolts shall be machined to remove burrs or projections that affect planarity of a surface forming a flame-arresting path.

[11] This maximum clearance applies only when the bolt is located within the flamepath.

[12] The edge of the bolt hole shall include the edge of any machining done to the bolt hole, such as chamfering.

[13] Less than 7/16" (1/4" minimum) will be acceptable provided the diametrical clearance for fastening bolts does not exceed 1/32".

[14] Shafts or operating rods through journal bearings shall be not less than 1/4" in diameter. The length of fit shall not be reduced when a push buttom is depressed. Operating rods shall have a shoulder or head on the portion inside the enclosure. Essential parts riveted or bolted to the inside portion are acceptable in lieu of a head or shoulder, but cotter pins and similar devices shall not be used.

(7) O-rings, if used in a flame-arresting path, shall meet the following:

(i) When the flame-arresting path is in one plane, the o-ring shall be located at least one-half the acceptable flame-arresting path length specified in paragraph (a)(6) of this section within the outside edge of the path (see figure J–2 in appendix I, subpart J, of part 7 of this chapter),

(ii) When the flame-arresting path is one of the plane-cylindrical type (step joint), the o-ring shall be located at least ⅛ inch within the outer edge of the plane portions (see figure J–3 in appendix to subpart J part of 7 of this chapter), or at the junction of the plane and cylindrical portion of the joint (see figure J–4 in appendix to subpart J of part 7 of this chapter); or in the cylindrical portion (see figure J–5 in appendix to subpart J of part 7 of this chapter).

(8) Mating parts comprising a pressed fit shall result in a minimum interference of 0.001" between the parts. The minimum length of the pressed fit shall be equal to the minimum thickness requirement of paragraph (a)(6) of this section for the material in which the fit is made.

* * * * *

5. Section 18.32 is revised by adding paragraph (i) to read as follows:

§ 18.32 Fastenings-additional requirements.

* * * * *

(i) Coil-thread inserts, if used in holes for fastenings, shall meet the following:

(1) The inserts shall have internal screw threads.

(2) The holes for the inserts shall be drilled and tapped to the insert manufacturer's specifications.

(3) The inserts shall be installed according to the insert manufacturer's specifications.

(4) The inserts shall be of sufficient length to ensure the minimum thread engagement of fastening specified in § 18.31(a)(6).

6. Section 18.33 is revised to read as follows:

§ 18.33 Finish of surface joints.

Flat surfaces between bolt holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in § 18.31(a)(6). All metal surfaces forming a flame-arresting path shall be finished during the manufacturing process to not more than 250 microinches. A thin film of non-hardening preparation to inhibit rusting may be applies to these finished metal surfaces as long as the final surface does not promote the adherence of foreign materials.

7. Section 18.34 is amended by adding an introductory paragraph and revising paragraph (a)(6) before the note to read as follows:

§ 18.34 Motors.

Explosion-proof electric motor assemblies intended for use in approved equipment in underground mines that are specifically addressed in part 7 shall be approved under part 7 of this chapter after (insert date 2 years from the effective date of the rule). Those motor assemblies not specifically addressed under part 7 be accepted or certified under this part.

(a) * * *

(6) Oil seals shall be removed from motors prior to submission for explosion tests.

* * * * *

8. Section 18.37 is amended by revising paragraph (b) to read as follows:

§ 18.37 Lead entrances.

* * * * *

(b) Stuffing boxes shall be so designed, and the amount of packing used shall be such, that with the packing properly compressed, the gland nut still has a clearance distance of ⅛" or more to travel without meeting interference by parts other than packing. In addition, the gland nut shall have a minimum of three effective threads engaged (see figures 8, 9 and 10)

* * * * *

9. Section 18.62 is amended by revising the fifth sentence of paragraph (a) to read as follows:

§ 18.62 Tests to determine explosion-proof characteristics.

(a) * * * Coal dust having a minimum of 22 percent dry volatile matter and a minimum heat constant of 11,000 moist BTU (coal containing natural bed moisture but not visible surface water) ground to a fineness of minus 200 U.S. Standard sieve series.* * *

* * * * *

[FR Doc. 91–5674 Filed 3–11–91; 8:45 am]
BILLING CODE 4510–43–M

federal register

Tuesday
March 12, 1991

Part IV

Department of Housing and Urban Development

Office of the Secretary
Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Delegation of Authority to the Assistant Secretary for Housing—Federal Housing Commissioner To Oversee Financial Operations; Notice

Redelegation of Authority to Housing—Federal Housing Administration Comptroller; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-91-946; FR-2737-D-01]

Delegation of Authority to the Assistant Secretary for Housing—Federal Housing Commissioner To Oversee Financial Operations

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: On November 3, 1989, certain responsibilities to oversee FHA accounting and cash management functions were transferred from the Assistant Secretary for Administration to the Assistant Secretary for Housing—Federal Housing Commissioner. Subsequently, section 122 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235, 103 Stat. 1987 (1989), established the position of Federal Housing Administration Comptroller within the Department. The Secretary of Housing and Urban Development is delegating to the Assistant Secretary for Housing—Federal Housing Commissioner certain responsibilities to oversee the financial operations of the programs administered by the Assistant Secretary for Housing—Federal Housing Commissioner.

EFFECTIVE DATE: February 25, 1991.

FOR FURTHER INFORMATION CONTACT: Eleanor M. Clark, Housing—FHA Comptroller, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 5132, Washington, DC 20410. Telephone (202) 401-8800 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to the transfer of FHA accounting and cash management functions from the Assistant Secretary for Administration to the Assistant Secretary for Housing—Federal Housing Commissioner and pursuant to section 122 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235, 103 Stat. 1987, at 2022, in which Congress established a new position in the Department entitled Federal Housing Administration Comptroller and gave that official certain responsibility for overseeing the financial management operations of the FHA, the Secretary is delegating to the Assistant Secretary for Housing—Federal Housing Commissioner a variety of responsibilities related to the financial operations of those programs administered by the Assistant Secretary. These responsibilities include: formulating financial management policies and procedures, maintaining the FHA general ledger, preparing internal reports, and ensuring the accounting and actuarial soundness of the FHA funds and the financial management of other, non-FHA Housing programs.

At present, certain accounting services related to the Office of Housing's non-insurance programs are provided by the Office of Finance and Accounting (OFA) under the Assistant Secretary for Administration. OFA also provides accounting control over cash transactions for the insurance program and prepares all financial statements to the Department of the Treasury for both the insured and non-insured programs. These services include ensuring the adequacy of internal controls in the manual and automated accounting processes and systems, and ensuring the timeliness, relevance and accuracy of accounting data provided by the accounting systems. The Housing—FHA Comptroller will be responsible for ensuring that all Housing programs are managed in a financially prudent manner to ensure that laws and regulations governing Housing programs are complied with, that adequate internal controls are present in Housing's programs, and that accurate, timely and relevant information is provided to support management's responsibilities for program planning and control. At a later date, the provisions of 24 CFR part 3, subpart C, will be revised to indicate the delegated authority for the Office of Housing in light of certain organizational changes.

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Secretary delegates to the Assistant Secretary for Housing—Federal Housing Commissioner the following basic authority and functions:

1. To provide financial management of the programs administered by the Assistant Secretary for Housing—Federal Housing Commissioner;

2. To formulate and develop financial management and internal control policies; to oversee FHA's compliance with OMB Circulars A-123 (Internal Controls), A-127 (Financial Management Systems), and A-130 (Federal Information Resources) as they apply to Housing and FHA financial and program operations; to establish and supervise the development and execution of uniform Housing and FHA policies, principles and procedures necessary for financial management; to issue directions to the Housing—Federal Housing Administration Comptroller to implement policies approved by the Assistant Secretary in the functions assigned to the Housing—FHA Comptroller; and to advise the Secretary on the financial impact of newly proposed housing programs and mortgage insurance products and modification to existing products;

3. To maintain the FHA General Ledger and the chart of accounts of the FHA funds;

4. To be responsible for the establishment and maintenance of appropriate financial management control over Housing and FHA programs; to devise and establish insurance fiscal servicing, accounting and fiscal procedures and to administer the fiscal policies and activities for Housing and FHA programs; to provide technical advice and guidance to all organizational elements under the Assistant Secretary in the fields of accounting and fiscal matters; to track actual Housing and FHA financial activities against the budget and business plan; and to coordinate the development and maintenance of integrated financial management systems needed for accounting and management of the Housing and FHA programs;

5. To prepare reports; to report to the Secretary, other Offices, the Department's Chief Financial Officer, and other HUD Regional and Field staff on the financial condition of FHA mortgage insurance programs (including actual and projected cash flows, accounting and performance reports, program effectiveness controls and insurance reserves analyses); to publish an annual FHA report reflecting prior year accomplishments and the audited financial statements; and to prepare internal reports on the financial condition of Housing and FHA programs;

6. To develop and maintain integrated financial management systems; and to direct studies and audits of the accounting and financial information and systems functions;

7. To prepare and execute policies and systems to measure the financial and actuarial soundness of Housing and FHA programs; and to ensure the conduct of an independent annual audit of the FHA program financial statements;

8. To obtain reports, information, advice and assistance in carrying out assigned functions; and to develop financial management information to assist in developing budget, financial, accounting, and cost accounting information on a timely basis;

9. To be responsible for coordination and general supervision of the Actuarial staff, the Housing Standards and Procedures staff, and the Housing Reports staff;

10. To The direct the investment of moneys held in the various Housing/FHA insurance funds, not needed for current operations, in bonds or other obligations of the United States, or in bonds or other obligations guaranteed as to principal and interest by the United States.

Section B. Authority Excepted

Authority excepted from this delegation of authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Housing—Federal Housing Commissioner:

1. To sue and be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Housing—Federal Housing Commissioner is authorized to redelegate the authority delegated in Section A.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 25, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-5761 Filed 3-11-91; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D-91-947; FR-2738-D-01]

Redelegation of Authority to Housing—Federal Housing Administration Comptroller

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary of Housing—Federal Housing Commissioner is redelegating to the Housing—Federal Housing Administration Comptroller certain responsibilities to oversee the financial operations of the programs administered by the Assistant Secretary.

EFFECTIVE DATE: February 25, 1991.

FOR FURTHER INFORMATION CONTACT: Eleanor M. Clark, Housing—FHA Comptroller, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., room 5132, Washington, DC 20410. Telephone (202) 401-8800 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Under section 122, Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235, 103 Stat. 1987, at 2022, Congress established a new position in the Department entitled Federal Housing Administration Comptroller and gave that official responsibility for overseeing the financial operations of the FHA.

By delegation issued contemporaneously with this redelegation, the Secretary delegated to the Assistant Secretary for Housing—Federal Housing Commissioner a variety of responsibilities related to the financial operations of those programs administered by the Assistant Secretary. The Assistant Secretary is redelegating to the Housing—FHA Comptroller a variety of responsibilities related to the financial operation of those programs administered by the Assistant Secretary. These responsibilities include: formulating financial management policies and procedures, maintaining the FHA general ledger, preparing internal reports, and ensuring the accounting and actuarial soundness of the FHA funds and the financial management of other. non-FHA Housing programs.

At present, certain accounting services related to the Office of Housing's non-insurance programs are provided by the Office of Finance and Accounting (OFA) under the Assistant Secretary for Administration. OFA also provides accounting control over cash transactions for the insurance program and prepares all financial statements to the Department of the Treasury for both insured and non-insured programs. These services include ensuring the adequacy of internal controls in the manual and automated accounting processes and systems, and ensuring the timeliness, relevance and accuracy of accounting data provided by the accounting systems. The Housing—FHA Comptroller will be responsible for ensuring that all Housing programs are managed in a financially prudent manner to ensure that laws and regulations governing Housing programs are complied with, adequate internal controls are present in Housing's programs, and accurate, timely and relevant information is provided to support management's responsibilities for program planning and control. At a later date, the provisions of 24 CFR part 3, subpart C, will be revised in light of certain organizational changes.

Accordingly, the Assistant Secretary redelegates as follows:

Section A. Authority Redelegated

The Assistant Secretary for Housing—Federal Housing Commissioner redelegates to the Housing—Federal Housing Administration Comptroller the following basic authority and functions:

1. To provide financial management for programs administered by the Assistant Secretary for Housing—Federal Housing Commissioner;

2. To formulate and develop financial management and internal control policies; to oversee Housing/FHA's compliance with OMB Circulars A-123 (Internal Controls), A-127 (Financial Management Systems), and A-130 (Federal Information Resources) as they apply to Housing and FHA financial and program operations; to establish and supervise the development and execution of uniform Housing and FHA policies, principles and procedures necessary for financial management; to issue directions that implement policies approved by the Assistant Secretary for Housing—Federal Housing Commissioner in the functions assigned to the Housing—FHA Comptroller; and to advise the Assistant Secretary for Housing—Federal Housing Commissioner on the financial impact of newly proposed housing programs and mortgage insurance products and modification to existing products;

3. To maintain the FHA General Ledger and the chart of accounts of the FHA funds;

4. To establish and maintain appropriate financial management control over Housing and FHA programs; to devise and establish insurance servicing, accounting and fiscal procedures and to administer the fiscal policies and activities for Housing and FHA programs; to provide technical guidance to organizational elements under the Assistant Secretary in the field of accounting and fiscal matters; to track Housing and FHA financial activities against the budget and business plan; and to coordinate the development and maintenance of integrated financial management systems needed for accounting and management of the Housing and FHA programs;

5. To prepare reports; to report to the Assistant Secretary for Housing—Federal Housing Commissioner, other Offices, the Department's Chief Financial Officer, and other HUD Regional and Field staff on the financial condition of FHA mortgage insurance programs (including actual and projected cash flows, accounting and

performance reports, program effectiveness controls and insurance reserves analyses); to publish an annual FHA report reflecting prior year accomplishments and the audited financial statements; and to prepare internal reports on the financial condition of Housing and FHA programs;

6. To develop and maintain integrated financial management systems; and to direct studies and audits of the accounting and financial information and systems functions;

7. To prepare and execute policies and systems to measure the financial and actuarial soundness of Housing and FHA programs; and to ensure the conduct of an independent annual audit of the FHA program financial statements;

8. To obtain reports, information, advice and assistance in carrying out assigned functions; and to develop financial management information to assist in developing budget, financial, accounting, and cost accounting information on a timely basis;

9. To be responsible for coordination and general supervision of the Actuarial staff, the Housing Standards and Procedures staff, and the Housing Reports staff;

10. To direct the investment of moneys held in the various Housing/FHA insurance funds, not needed for current operations, in bonds or other obligations of the United States, or in bonds or other obligations guaranteed as to principal and interest by the United States.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 25, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-5762 Filed 3-11-91; 8:45 am]

BILLING CODE 4210-27-M

federal register

Tuesday
March 12, 1991

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for Historically Black Colleges and Universities Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3224; FR-3003-N-01]

Funding Availability for Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for FY 1991.

DATE: The actual Application Due Date will be specified in the application kit. The Due Date will be a date no earlier than 60 days from the first date that applications are made available.

SUMMARY: This NOFA announces funding for the Historically Black Colleges and Universities (HBCU) Program. In the body of this document is information concerning the following:

(a) The purpose of the NOFA and information regarding available amounts, objectives, eligibility and selection criteria;

(b) Application processing, including how and when to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

For an Application Kit Contact: Connie Southerland Collins, Program Support Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Requests must be in writing and may be sent to this address or may be made by facsimile machine to the following number: (202) 401-2032. The TDD number for the hearing impaired is (202) 708-2565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

I. Purpose and Substantive Description

A. Authority

This program is authorized under Section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act). The program is governed by regulations contained in 24 CFR 570.400, 570.404 and 24 CFR part 570, subparts A, C, J, K and O. HUD expects to publish the HBCU final rule in March, 1991.

B. Allocation Amounts and Form

The Fiscal Year 1991 appropriation for the HBCU program is $4.5 million. The maximum amount awarded to any applicant will be $500,000. The awards will be made in the form of grants.

C. Objectives

The objectives of this program are:

1. To help HBCUs expand their role and effectiveness in addressing community development needs, including neighborhood revitalization, housing and economic development in their localities, consistent with the purposes of the 1974 Act.

2. To help HBCUs address the priority needs of their localities in meeting the following HUD priorities:

- Expand homeownership and affordable housing opportunities.
- Create jobs and economic development through enterprise zones.
- Empower the poor through resident management.
- Enforce fair housing for all.
- Help make public housing drug free.
- Help end the tragedy of homelessness.

In order to qualify for funding, an applicant will have to demonstrate how it will meet objective #1. Applicants who meet objective #2 in at least one priority area will receive higher scores in the rating process.

D. Eligibility

1. *Eligible Applicants.* Only HBCUs as determined by the Department of Education in 34 CFR 608.2 in accordance with that Department's responsibilities under Executive Order 12677, dated April 28, 1989, are eligible to submit applications.

2. *Eligible Activities.* Activities that may be funded under this NOFA are those activities eligible for CDBG funding. They are listed in 24 CFR 570.201 through 570.206, copies of which will be included in the application kit. Basic eligible activities include acquisition and disposition of real property, public facilities and improvements, rehabilitation assistance, special economic development activities, planning and other activities.

Activities which are ineligible for funding are listed in 24 CFR 570.207. Additionally, an activity which otherwise is eligible under 24 CFR 570.201-570.206 may not be funded if State or local law requires that it be carried out by a governmental entity.

In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve applications for any activities that would be located or carried out in the Coastal Barrier Resources System.

For several years, under the technical assistance grants authority of section 107 of the 1974 Act, HBCUs have been funded to provide technical assistance to units of general local government to increase the effectiveness of such entities in planning, developing and administering assistance under the CDBG program. While HBCUs will continue to be eligible to compete for such technical assistance grants, the HBCU program to be funded under this Notice is not for the provision of technical assistance, but the broader range of eligible activities described above. This new HBCU program was authorized as a separate special purpose grant program by the HUD Reform Act of 1989.

3. *Locality.* This program is designed to assist HBCUs to expand their role and effectiveness in addressing community development in their localities. The term locality will differ for each HBCU, depending on its location. It includes any city, county, town, township, parish, village, or other general political subdivision of a State within which the HBCU is located. An HBCU located in a metropolitan statistical area, as established by the Office of Management and Budget, may consider its locality to be one or more of these entities within the entire area.

4. *Local Approval.* Since eligible activities must take place in a locality (as defined above), each local government where an activity is to take place must approve the activity and state that the activity is not inconsistent with its community development plan or program. This approval and finding must accompany each application and may take the form of a letter by the chief executive officer of the locality or resolution by the legislative body of the locality.

5. *Environmental Review.* HUD will conduct an environmental review in accordance with 24 CFR part 50 before giving its approval to a proposal. Applicants are urged to be cognizant of this factor in preparing their proposals.

E. Ranking Factors and Rating

The factors set forth below will be used by the Department to evaluate applications. Each application must contain sufficient technical information to be reviewed for its technical merits. The score of each factor will be based on the qualitative and quantitative aspects demonstrated in each. The maximum number of points for each factor (out of a total of 100 points) is as follows:

Ranking factors	Maximum points
1. Addressing the Objectives	20
The extent to which the applicant addresses the objectives of this program as specified in I.C. above. In rating this factor, the Department will consider:	
a. The extent to which the applicant demonstrates that the proposed activities and program will expand its role and effectiveness in addressing community development needs in its locality(ies).	
b The extent to which the applicant's proposed activities will address high priority needs in each locality's community development plan or program.	
c. The extent to which the applicant's proposed activities address one or more of the HUD priorities specified in I.C.2. above.	
2. Substantial Impact in Achieving Objectives	25
The extent to which the applicant demonstrates that the proposed activities will have a substantial impact in achieving the objectives in I.C. In rating this factor the Department will consider:	
a. The extent to which the applicant demonstrates how the proposed activities will have a substantial impact on increasing its role and effectiveness in addressing the community development needs of its locality.	
b. The extent to which the applicant demonstrates how the proposed activities will have a substantial impact on meeting one or more of the stated HUD priorities.	
c. The extent to which the applicant demonstrates how the proposed activities will have a substantial impact on the community development goals and programs of the locality in which the activity will take place.	
3 Special Needs of Applicant or Locality	10
The extent to which the applicant demonstrates that the applicant or locality has special needs which will be addressed or met by the proposed activities, particularly with respect to benefitting low- and moderate-income persons. In evaluating this factor, HUD will consider the immediacy of the special need in the locality, particularly with respect to low- and moderate-income persons.	
4. Technical and Financial Feasibility and Match	25
The extent to which the applicant demonstrates the technical and financial feasibility for achieving the objectives, including local support for the activities proposed to be carried out in the locality and any matching funds proposed to be provided from sources other than the applicant. In evaluating applications, HUD will consider:	
a. The extent to which the applicant demonstrates the technical feasibility for achieving the objectives within the program period proposed.	
b. The extent to which the applicant demonstrates the financial feasibility for achieving the objectives.	
c. The extent to which the applicant demonstrates local support for the activities to be carried out in the locality as evidenced by commitment of matching funds proposed to be provided from sources other than the applicant; commitment of local government or other staff; in-kind resources; or related governmental actions.	
5. Capacity	20
The extent to which the applicant demonstrates the capacity to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any prior HUD-assisted projects or activities. In evaluating applications, HUD will consider:	
a. The extent to which the applicant's proposed management plan: clearly delineates staff responsibilities and accountability for all work required; presents a work plan with a clear and feasible schedule for conducting all project tasks; presents a reasonable and adequate planned budget as reflected in the budget-by-task and supporting rationale and justification for the budget.	
b. The extent to which the applicant demonstrates timely and satisfactory recent performance in community development activities, including HUD-assisted projects or activities, of the same or similar type to those proposed in the application.	
c. The extent to which the applicant demonstrates the capacity, background and experience of the program manager and key staff to carry out satisfactorily the proposed activities in a timely fashion.	
Total Points	100

F. Selection Method

1. *Threshold Areas.* An applicant will have to demonstrate how it meets objective #1 of this HBCU program (helping HBCUs expand their role and effectiveness in addressing community development needs in their localities) in order to qualify for evaluation and ranking. Activities which are not eligible for funding under this program (see I.D.2 above) will not be reviewed in the evaluation process. If more than 50 percent of the amount requested in the application are for ineligible activities, then the application will not be evaluated or ranked.

2. *Ranking Process.* Applications for funding under this Notice will be evaluated competitively, and awarded points based on the factors identified above. The Department will rank the applications in descending order according to score. Applications will be funded in rank order, until all available funds have been obligated, or until there are no acceptable applications.

3. *HUD Flexibility.* In the case of proposals of approximately equal merit, HUD retains the right to exercise discretion in selecting projects that would best serve the program objectives, with consideration given to the needs of localities, types of activities proposed, equal geographical distribution, and program balance. These factors will be given equal consideration.

II. Application Process

A. Obtaining and Submitting Applications

Application kits will be available no earlier than 30 days from the date of publication of this Notice. Application kits must be requested in writing from: Connie Southerland Collins, Program Support Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, or by facsimile machine to the following number: (202) 401–2032. The TDD number for the hearing impaired is (202) 708–2565. (This is not a toll-free number.)

Completed applications must be submitted to the address above. One copy of the application must be submitted to the HUD Field Office with jurisdiction for the locality in which the applicant is located.

B. Application Deadline

An application for funding under this Notice must be received by the date specified in the application kit. No application received after the deadline date will be considered.

III. Checklist of Application Submission Requirements

A. Document Submissions

Each application must include an original and two copies of the following documents: (An additional copy is to be submitted to the appropriate HUD Field Office as specified above.)

1. Standard Form 424 (Request for Federal Assistance) signed by the Chief Executive Officer of the HBCU submitting the application.

2. A budget by task.

3. A certification form.

4. A description of the activities and their location proposed to be carried out, including a timetable listing tasks and milestones. A management plan delineating staff responsibilities and a work plan must be included. If any match is to be provided, the type, amount, and source should be shown.

5. A description of how the applicant meets each of the ranking factors detailed in section I.E. above.

6. The letter of locality approval required in I.D.4 above.

7. If matching funding is to be provided, a letter from the Chief Executive Officer of the locality, corporation or other entity providing the match certifying as to the type, amount, and timing of the match.

IV. Corrections to Deficient Applications

Immediately after the deadline for submission of applications, applications will be screened to determine whether all items were submitted. If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory, the Department shall notify the applicant in writing that the applicant has 14 calendar days from the date of the written notification to submit the missing item, or correct the technical mistake. If the applicant does not submit the missing item within the required time period, the application will be ineligible for further processing.

The 14-day cure period pertains only to nonsubstantive technical deficiencies or errors. Any deficiency capable of being cured shall only involve an item that is not necessary for the Department's ability to assess the merits of an application under the ranking factors set forth in this NOFA.

V. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(b) *Federalism, Executive Order 12612.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits HBCU applicants to expand their role in addressing community development needs in their localities and does not impinge upon the relationships between the Federal government, and State and local governments.

(c) *Family, Executive Order 12606.* The General Counsel, as the Designated under Executive Order 12606, The Family, has determined that this document does not have potential for significant impact on family formation, maintenance, and general well-being. The notice only solicits HBCU to apply for funding to address community development needs in their locality. An impact on the family will be indirect and beneficial in that better planning of community development needs should result.

The HBCU Program is listed in the Catalog of Federal Domestic Assistance under number 14.237.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d); 24 CFR 570.404).

Dated: March 7, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91–5945 Filed 3–11–91; 8:45 am]

BILLING CODE 4210-29-M

federal register

Tuesday
March 12, 1991

Part VI

The President

Executive Order 12753—Nuclear Cooperation With EURATOM

Federal Register
Vol. 56, No. 48
Tuesday, March 12, 1991

Presidential Documents

Title 3—

The President

Executive Order 12753 of March 8, 1991

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to section 126a(2) of such Act and extended for 12-month periods by Executive Orders Nos. 12193, 12295, 12351, 12409, 12463, 12506, 12554, 12587, 12629, 12670, and 12706, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1992. Executive Order No. 12706 shall be superseded on the effective date of this Executive order.

THE WHITE HOUSE,
March 8, 1991.

[FR Doc. 91-6023
Filed 3-11-91; 9:14 am]
Billing code 3195-01-M

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